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CIS

STEELHEAD TROUT PROTECTION ACT—PART 2

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 874

TO PROVIDE FOR ADDITIONAL PROTECTION OF STEELHEAD TROUT AS A GAME FISH

SEPTEMBER 28, 1981

WASHINGTON, D.C.

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STEELHEAD TROUT PROTECTION ACT—PART 2

SEPTEMBER 28, 1981

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 6226, Dirksen Senate Office Building, Senator William S. Cohen (chairman) presiding.

Present: Senators Cohen, Gorton, and Melcher.

Staff present: Timothy Woodcock, staff director; Peter Taylor, general counsel; Mary Jane Wrenn, staff attorney; John Chavez, staff attorney; and Max Richtman, minority staff director.

Senator COHEN. The hearing will come to order.

Today's hearing centers on the status of the steelhead trout in the State of Washington and surrounding States. The background to this issue is, I believe, familiar to everyone who is here in the audience.

The roots of the controversy reach back to the year 1854 when the new territorial Governor of Washington, Isaac Stevens, embarked on a rather ambitious program to effect treaties with the numerous Indian tribes within the territory and to secure lands for the growing numbers of settlers.

The treaties which Stevens and the tribes entered into provided, among other things, that the tribes would have the right to take fish in common with the citizens of the territory in their "usual and accustomed places."

This clause in the treaties, although the focal point of many legal disputes, did not receive a final interpretation from the U.S. Supreme Court until July 1979.

Five years before that, the U.S. District Court for the western district of Washington had ruled in *U.S.* v. *Washington* that the treaty guarantee to a tribal right to fish "in common" meant that Indian tribes were entitled to an opportunity to take up to 50 percent of the harvestable fish entering that usual and accustomed place of fishing.

When the Supreme Court finally ruled on the district court's decision, it substantially affirmed it. Even before the Supreme Court reached this decision, Congress had held hearings to determine the extent of the economic dislocation caused by the reallocation of the fishing opportunity and to seek a solution to it.

After 10 hearings which produced copious testimony, Congress in the waning days of the 96th Congress, passed the Salmon and Steelhead Conservation and Enhancement Act.

This act, which was premised on the conception that tensions could be eased if more salmon and steelhead were made available, authorized large amounts of money to give effect to its purpose.

To date, however, little has been slated for actual appropriation under this act.

Today's hearing differs from its predecessors in that rather than focusing on the entire anadromous fishery of the Northwest, it is concerned with one species of fish, the steelhead trout.

This fish has long been highly regarded by sportsmen as one of the great fighting fish. It is likewise valued by the treaty fishermen because of its ceremonial, nutritional, and commercial value.

I should note that as a Senator from Maine and a native from Bangor which boasts the world famous Bangor Salmon Pool, I am well aware of the importance and the feeling that is attached to anadromous sports fish. Although the Atlantic salmon is returning to Maine waters after a prolonged absence, its return has been a slow and painstaking process.

S. 874 is premised on the conviction that the commercial harvest of steelhead trout has so complicated management of the fish that it is placing it in extreme jeopardy. I believe that everybody who will testify today places the greatest importance on the welfare of the steelhead trout.

At this point, without objection, I will place a copy of S. 874 in the hearing record.

[The bill follows:]

II

97TH CONGRESS
1ST SESSION

S. 874

To provide for additional protection of steelhead trout as a game fish, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, FEBRUARY 16), 1981

Mr. GORTON (for himself, Mr. JACKSON, Mr. MCCLURE, and Mr. SYMMS) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for additional protection of steelhead trout as a game fish, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Steelhead Trout Protection Act".

SEC. 2. FINDINGS.—The Congress finds and declares the following:

(1) Steelhead trout constitute a valuable and popular recreational fishery resource.

(2) The value of steelhead trout to the economy as a game fish is substantially greater than its value as a commercial fish.

(3) Several States have designated steelhead trout as game fish, have required that such fish be taken only with sport fishing equipment, and have prohibited the commercial harvest and sale of such fish.

(4) Congress, in enacting the "Act to require the interstate transportation of black bass and other fish", intended to assist the States in the enforcement of State statutes which prohibit the commercial taking of any species of fish.

(5) United States Federal court decisions, which have interpreted certain treaties with Indian tribes to allow certain Indian fishermen to harvest and market steelhead trout commercially, have had detrimental effects on sport fishing, on the economies of the affected States, and on the ability of the affected States to manage the species effectively and uniformly.

(6) The right to license sportsmen to fish for steelhead trout on Indian lands may well be more valuable to Indian tribes than is a commercial fishery for steelhead trout.

SEC. 3. STEELHEAD DECOMMERCIALIZATION.—(a) Notwithstanding any Indian treaty or any Federal court decision interpreting Indian tribal fishing rights, the laws and regulations of a State prohibiting, restricting, or regulating the taking, possession, transportation, or sale of steelhead trout (salmo gairdnerii) shall apply to and be enforceable against Indians and Indian tribes fishing at places within such State both within and without the boundaries of an Indian reservation in such State in the same manner and to the same extent as such laws and regulations apply to other persons: *Provided,* That, a State by written agreement with an Indian tribe may establish different laws or regulations as to the taking and possession of steelhead trout by Indian tribal members on an Indian reservation.

(b) The authority provided a State by this section shall be in addition to any jurisdiction to enact and enforce fish and game laws held by that State on the date immediately preceding the date of the enactment of this Act. Notwithstanding the provisions of sections 1321 and 1322 of title 25, United States Code, tribal consent is not necessary for a State to assume jurisdiction pursuant to this section.

(c) To the extent necessary for the purposes of this section, the rights of any Indian tribe or member thereof to take, possess, transport, or sell steelhead trout inside or outside of Indian reservation boundaries are hereby terminated or modified.

SEC. 4. ENFORCEMENT AUTHORITY.—(a) An Indian tribe may require a license to be obtained from, and fees to be paid to, the tribe with respect to any person fishing, or wishing to fish for steelhead trout on the tribe's Indian trust land or in waters within the exterior boundaries of the tribe's reservation. A tribe may prescribe such conditions for the issuance of a license as it determines to be necessary and appropriate for the sound operation of such licensing system.

(b) Any requirements imposed under this paragraph shall be in addition to applicable State license requirements: *Provided, however,* That a State may not require a member of an Indian tribe to obtain a license from, or pay fees to, the State in order to fish on the tribe's Indian trust land or in waters within the exterior boundaries of the tribe's reservation or at usual and accustomed fishing grounds of such tribe.

(c) Except as provided in paragraph (a), an Indian tribe may not regulate the taking, possession, transportation, or sale of steelhead trout in a manner which is inconsistent with State law and regulations.

(d) It is unlawful for any person, who is not a member of an Indian tribe, to violate any licensing requirements or conditions which may be prescribed by that tribe pursuant to paragraph (a).

(e) The provisions of paragraph (d) shall be enforced by the Secretary of the Interior: *Provided, however,* That tribal enforcement personnel may—

(1) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by the tribe pursuant to paragraph (a);

(2) seize any fishing vessel, or fishing gear which reasonably appears to have been used or employed in the violation of a requirement prescribed by the tribe pursuant to paragraph (a);

(3) seize any fish taken or retained in violation of the requirement prescribed by the tribe pursuant to paragraph (a), and

(4) seize any other evidence related to any violation of the requirements prescribed by the tribe pursuant to paragraph (a).

(f)(1) Any person who is found by the Secretary of the Interior, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (d) shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $1,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

SEC. 5. CONFORMING AMENDMENT.—(a) Sections 2 through 8 of the Act entitled, "An Act to regulate the interstate transportation of black bass and other fish," as amended (16 U.S.C. 852–54), are amended by inserting ", steelhead trout" after "black bass" whenever the latter term appears.

(b) Section 10 of the Act entitled, "An Act to regulate the interstate transportation of black bass and other fish," approved May 20, 1926, as amended (16 U.S.C. 851-856) is hereby repealed.

SEC. 6. COMPENSATION.—The Court of Claims is hereby conferred with exclusive jurisdiction to receive, hear, determine, and render final judgment, on all causes of action, which seek compensation for an alleged taking of Indian treaty rights arising under or growing out of this Act. Such a claim must be filed in the Court of Claims within three years of the effective date of this Act. Such a claim may be filed only by an affected Indian treaty tribe. In considering the value of such a claim for compensation, the Court of Claims shall, inter alia, reduce the value of any right to a steelhead trout commercial fishery by the value of the right to license a steelhead trout sport fishery.

Senator **Cohen**. The purpose of today's hearing is to accept testimony which will bear on the status of this species of fish and the effect that the treaty on commercial fishing is having on it.

I understand the feelings that have attended this issue and will ask that the testimony try to focus and center on a professional and scientific discussion of the status of the steelhead stocks.

I intended to turn to my colleagues on the committee, some of whom shall be here momentarily, but in the meantime we will proceed.

Our first witness today is Mr. Roy Sampsel, the Deputy Secretary of the Interior for Indian Affairs.

Mr. Sampsel is accompanied by Mr. Thomas Parisot, Deputy Associate Director of Fisheries in the U.S. Fish and Wildlife Service.

Mr. Sampsel will deliver the administration's statement on S. 874.

Before we begin, I should note that a representative of the Department of Commerce is in the audience to answer questions concerning the Department's role in this issue in the event that any should arise.

Gentlemen, welcome. I would point out that when Senator Gorton does appear, I may suspend the proceedings for any opening statement he would care to make.

In the meantime, we would be happy to hear your testimony.

STATEMENT OF ROY H. SAMPSEL, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JIM STEVENS, ACTING DIRECTOR; AND BARRY BETTS, ACTING DIVISION CHIEF, FISH AND WILDLIFE, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. **Sampsel**. Thank you, Mr. Chairman.

First let me introduce to my immediate right Mr. Jim Stevens who is the Acting Director of Trust Responsibilities within the Bureau of Indian Affairs and Mr. Barry Betts, Acting Division Chief of the Fish and Wildlife within the Bureau of Indian Affairs.

They are at the witness table to answer any technical questions the committee might have.

Mr. **Parisot**. I am Thomas Parisot, Fish and Wildlife Service, and to my left is Mr. Ralph Boomer who is our Fisheries Assistant Specialist in the State of Washington headquartered in Olympia. He also will be available to answer any technical questions.

Mr. **Sampsel**. Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 874, the Steelhead Trout Protection Act.

We strongly oppose the enactment of S. 874.

S. 874 would make the laws and regulations of a State prohibiting, restricting, or regulating the taking, possession, transportation, or sale of steelhead trout applicable to Indians fishing both within and without their reservations to the same extent such laws apply to other persons. The bill would also authorize Indian tribes to issue licenses and charge fees for steelhead trout fishing on tribal lands.

In addition, S. 874 would make the provisions of the Black Bass Act which prohibit interstate or foreign commerce in black bass when contrary to State law applicable to steelhead trout.

Finally, the bill would confer jurisdiction upon the Court of Claims to adjudicate tribal claims for compensation for the taking of treaty rights.

S. 874 would affect the treaty fishing rights of 21 tribes in northwest Washington and of 4 tribes in Washington, Oregon, and Idaho whose treaty fishing rights have been adjudicated as well as tribes in California and Michigan.

Many of the Indian tribes in the Northwest have judicially upheld rights under their treaties with the United States to take one-half of the harvestable fish destined for the usual and accustomed tribal fishing sites.

This treaty right includes the right to fish for steelhead trout. Steelhead trout is highly prized by sports fishermen for its recreational value, but it also constitutes an integral part of the fishery of many tribes.

Furthermore, because steelhead frequently run together with salmon, restrictions on tribal steelhead fishing would adversely affect the fisheries of many tribes even when steelhead is not the "targeted" species.

Section 2(2) of the bill states that "the value of steelhead trout to the economy as a game fish is substantially greater than its value as a commercial fish."

Most of the treaty tribes have become increasingly dependent on steelhead as a major income resource due to excessive nontreaty marine harvest of salmon which results in conservation closures of these tribal fisheries.

Since steelhead escape most nontreaty fisheries, steelhead is becoming more reliable as an income source than salmon, in some cases.

On the other hand, steelhead is only one of many resources that form an economic basis for the sports industry. The value of a sport-caught steelhead is frequently determined through a multiplier effect: The cost of fishing equipment, lodging, and transportation, among other things, are included to obtain the value of a sport-caught fish.

Since an appropriate multiplier is not used in assessing the value of steelhead caught in the commercial fishery, any indication that sport-caught steelhead are more valuable than commercial-caught steelhead cannot be substantiated.

The decommercialization of steelhead trout, "notwithstanding any Indian treaty or Federal court decision," would abrogate tribal treaty rights to fish for steelhead trout. Congress has the power to abrogate Indian treaties, but the courts have been most reluctant to impute an intent to abrogate to Congress.

Treaty abrogation constitutes a repudiation of promises made to the Indians under which the United States acquired vast areas of land and vast quantities of resources; and the courts, to the extent possible, have protected treaty rights by assuming that Congress would not abrogate these rights in the absence of an overriding national interest.

S. 874 would deprive Indians of their treaty protected right to take steelhead trout in order to transfer the right to sportsmen. Sportsmen, however, are already authorized to take one-half of the harvestable steelhead passing through treaty fishing areas, as well as all the harvestable steelhead not destined for these areas.

Surely the provision of some additional fish to recreational users does not warrant the breaking of treaties solemnly executed by the United States.

In this regard, we note that any possible insufficiency in steelhead harvest for sports uses cannot be attributed solely to tribal fisheries. Low harvest levels are more accurately due primarily to excessively high estimates of harvestable surplus, to poor productivity due to environmental degradation, or to unreported nontreaty harvest by anglers or poachers.

Section 2(6) of the bill states that the right to license sportsmen to fish for steelhead on Indian lands may be more valuable to Indian tribes than is their commercial fishery for steelhead. Thus, section 4 authorizes the tribes to charge license fees. However, the tribes already have the right to charge fees for the privilege of fishing on Indian land, and this right has recently been affirmed by the Supreme Court in *Montana* v. *United States.*

Section 4 is unclear as to whether the tribes would have the right to exclude sports fishermen from trust land or whether the bill would grant sports fishermen the right to fish on these lands as long as they pay the appropriate tribal fee.

Under the *Montana* decision, tribes clearly have the right to exclude nonmembers from hunting and fishing on tribal trust land, and this conclusion appears to apply to allotments held in trust as well.

If the intent of S. 874 is to deny tribes the right to exclude nonmembers, it constitutes, at least, the interference with tribal self-government and probably constitutes yet a further abrogation of the treaties.

Section 4 would also allow the State government to impose its license fee, in addition to the tribal fee, on non-Indians fishing for steelhead on Indian land.

This additional license fee may significantly reduce the economic benefits section 4 purports to confer on the tribes.

Furthermore, although the issue is not settled, several courts have held that State governments lack authority to charge hunting and fishing license fees to non-Indians on trust land where such fees would interfere with tribal self-government and with tribal management of fish and wildlife resources.

Congress ought not to allow States to impose such fees when their legal status is uncertain, and it certainly ought not to allow such fees as part of a plan to abrogate treaties.

As stated earlier, enactment of S. 874 would abrogate tribal treaty fishing rights for steelhead and thus subject the United States to a claim for just compensation under the fifth amendment.

Under the bill, the value of the tribal commercial steelhead fishery is to be reduced by the value of the right to license a steelhead sports fishery; but as shown above, the tribes, to a great extent, have this right in any event.

Thus, it is highly doubtful whether any such offset could be charged against the tribe.

More importantly, enactment of S. 874 would lead to protracted, expensive, and complex litigation which could result in a substantial money judgment against the United States.

The history of Indian claims before the Indian Claims Commission and elsewhere suggests that potential claims such as this frequently result in large awards without putting to rest the underlying wrong involving the taking of a treaty right.

Problems of compensation, litigation, and finality are best avoided, in our opinion, by continuing to honor the treaty right.

We believe that the dedication of steelhead as a game fish can be achieved, where appropriate, on an individual basis through agreements between the State and the affected tribes.

We believe that as a gamefish, management can agree on the appropriate means by which to develop a management plan between the States and the affected tribes which would have the steelhead not the primary target species.

The Columbia River treaty tribes, for example, have agreed under a 5-year management plan, approved by a U.S. district court, to limit take of steelhead through time and location of gillnets for the harvest of salmon.

In return, the State and Federal Government have committed to improve the runs of all anadromous fish. The tribes have shown good faith in working with the States regarding the steelhead controversy.

Treaty tribes have become a primary source for up-to-date management information due to accumulated data and first-hand knowledge on the life history, spawning escapement and juvenile abundance of native stocks within their respective usual and accustomed fishing areas.

Furthermore, the natural steelhead is the focal point of tribal efforts to protect and rehabilitate native salmonids. Several tribes are raising steelhead for release into the rivers in cooperation with the Washington Department of Game.

The Puyallup Nation, for example, released 60,000 steelhead fingerlings this year. This is approximately two-thirds of the Washington Department of Game annual release into the Puyallup River.

Other tribal propagation programs include the Quinault release of 890,000 steelhead fingerlings, the Suquamish release of 80,000, the Hoh release of 44,000 and the lower Elwha release of 35,000. The list can go on.

I should also like to point out to the committee that Congress, as recently as December 1980, enacted legislation specifically designed to address the long-standing problem with the Northwest salmon and steelhead.

This legislation, entitled the "Salmon and Steelhead Conservation and Enhancement Act of 1980," encouraged State, Federal, and tribal management entities to coordinate their activities as to benefit the resources.

Senator COHEN. Excuse me. It is interesting you should mention the Salmon and Steelhead Conservation and Enhancement Act. As I understand it, the administration did not recommend this act be funded.

Mr. SAMPSEL. That is true. But the act made it very clear what the intent of Congress was and how this issue was to be handled. There are funding limitations, but the act addressed the problem that is addressed by this bill, I think, in a progressive way.

Senator COHEN. If the act is to be on the books and to be unfunded, it is rather impotent. If you are looking for congressional intent, that is the purpose of our passing laws in order to enhance the conservation of a particular species. And yet the administration does not fund those congressional acts. So, it is negative; right?

For all practical purposes it simply is an empty statement of intent without any real means dealing with the problem?

Mr. SAMPSEL. I think there are a number of cases in the past in which the same situation has occurred primarily because of the funding limitations.

As I recall, for example, the steelhead and salmon plans that were put together were a result of the Snake River mitigation and had been before Congress for a number of years and before the administration for a number of years. And yet we still do not have those mitigation plans for the Lower Snake River funded. They were authorized and never funded.

The same occurs with the fact that the final mitigation for Grand Coulee has never been completed. That structure was authorized by Congress and built some 40 years ago.

I recognize what you are saying, but it seems to me that the attempt was there and the language was specific. The fact that the funding did not take place or has not been recommended certainly does not change the sentiment that allowed for that bill to be passed by Congress and supported by many of the tribes that are against this particular piece of legislation.

Senator COHEN. To the extent this particular act was passed by the Senate and by the House and not put into effect because it had no money for a continuing liability under this section that would allow for compensation for the deprivation of a fifth amendment right, would you say, at that point, that that is an expression of congressional intent which should be abided by?

Mr. SAMPSEL. I think the way the bill is written that would not be the case in that it allows for the compensation to be set by the Court of Claims. The situation to which the Department or the administration responds on those types of compensation simply is to have a distribution plan.

Senator COHEN. I will reserve any further questions and will let Senator Gorton make an opening statement.

Are you concluding now?

Mr. SAMPSEL. Yes, I am.

In sum, we cannot support the abrogation of treaty rights, the overriding of Federal court decisions, or the invalidation of present comanagement agreements and other efforts between the tribes and State and Federal governments so that steelhead trout may be protected solely for the sports fishermen.

Based on the foregoing, we strongly oppose the enactment of S. 874.

This concludes my prepared statement. I would be pleased to answer any questions you or members of the committee may have.

Senator COHEN. One point before Senator Gorton begins.

You made the same statement twice this morning that the purpose behind S. 874 is to deprive the Indian tribes of their right to take steelhead trout so that that right may be transferred to sportsmen.

You concluded: "Surely, the provision of some additional fish to recreational uses does not warrant the breaking of treaties solemnly executed by the United States."

Frankly, I am a little bit confused by that statement because I was under the impression that the purpose behind the bill—and we will find out about the facts and their merits to the underlying assumption that there has been a diminution of the stock because of overfishing—but it seems to me that I do not find a basis for your conclusion that the sole purpose of this bill is to take and break treaty rights in order to benefit sports fishermen.

Correct me if I am wrong, but I do not know how you come to that conclusion when, in fact, it is my assumption that the benefit is to try to protect the steelhead trout from overfishing.

Mr. SAMPSEL. That has long been stated as the basis for these types of discussions in the past. My association with the fishery issue in the Northwest leads me to conclude that the steelhead stock itself is not in danger. I think the biological testimony from the Fish and Wildlife Service will clarify that.

So, what you have within the act, or within the proposed piece of legislation, is the elimination of a treaty right, which seems to me and to the Department, to be the primary effect of this piece of legislation, as opposed to the protection of the steelhead trout or the enhancement of it as a species.

I think the evidence that is going to be presented by the Department and other tribal entities will clearly indicate that.

So the net effect, based upon the evidence that we have, is rather than the preservation of the species, is the abrogation of a treaty right.

Senator COHEN. You are talking two different things. What you are saying is the net effect as opposed to the primary intent.

I think that we should be very clear, so far as I am concerned, about this particular bill; that we not come to the conclusion that the primary intent of this legislation is, in fact, to abrogate a treaty.

If the ultimate effect is based or reaches that conclusion because there is no factual basis to support the allegations or the declarations in the language of the proposed bill itself, then that is one thing. But it seems to me that we are not doing a service to the process by saying that the purpose is to terminate and abrogate a treaty obligation when you are saying that the ultimate effect might be that very same result.

What we want to try to do, so far as I am concerned, as chairman of the committee, is to find out whether or not there are underlying factual data that would support such an allegation, as, for example, the overfishing.

If, for example, there were a determination supported by a factual testimony compiled by this committee or other committees that in fact the fish were being overfished—that is, steelhead trout was being endangered because of overfishing—then would you then alter your statement here before the committee?

Mr. SAMPSEL. No, sir. Let me back up a moment.

It seems to me that S. 874 clearly states that this will be a taking and that that taking will be adjudicated or determined by the Court of Claims and that they would have that authority.

The bill says that this will be a Federal taking. That is an abrogation, as I understand the word.

It would seem to me that the intent of the bill is to take, to transfer, and to eliminate the commercial value which is recognized within the treaty and court cases and say that that no longer should be the case, but the Court of Claims can determine what the value is.

If that value is determined, then there would be a reduction from the value of the amount of money that may be obtained through the process of section 4 which will allow for the selling of licenses.

So, I see it clearly as an intent to abrogate.

Then, it seems to me, that the management question of whether or not you have the declining stocks of steelhead are best handled, not by the committee of Congress and certainly not by the administration in Washington, D.C., but the on-the-ground management entities which already have a cooperative management plan and a court decision which says that the conversation of the resource is the first and primary concern.

And, if the proof can be laid forth that there is a declining species—that this information can be put together—then there is every reason for the management of that resource to have conservation closures for the protection of that resource. I know of no tribal entity that objects to the legitimate conservation based upon the needs of the resource.

Senator COHEN. Is that not the purpose of the act passed in 1980 which is now unfunded?

Mr. SAMPSEL. The act that was passed in 1980 had a number of purposes, but the main purpose was to provide for the enhancement of those additional species.

Senator COHEN. What about enhancement versus conservation? What does that mean?

Mr. SAMPSEL. You can have conservation of a resource simply by not choosing to harvest it, whether it is on a sport or on a commercial basis. The enhancement would be to increase that resource so that you can have the beneficial use of that resource for all the citizens of the area.

Senator COHEN. You do not see any distinction between the two so far as what the objective is, or you do see a distinction that it is OK; that is, that we do not have a diminution of the species in terms of the facts as they stand. Is that what you believe?

Mr. SAMPSEL. In terms of the steelhead trout that you are going to hear testimony, based upon the strengths of those particular runs, show me that they can always be increased and they can always be enhanced, but they are not in such a desperate strait that we would say to the tribal fishermen that they cannot fish based upon the treaty rights.

If we were to say that they could not fish because they were diminished, this is a management issue. If we were saying that if there is a surplus and the court has determined whatever share of surplus the tribe should have, then what this law basically would do would be to eliminate that part by not allowing the tribe to commercially harvest. That, I consider to be a taking or abrogation of the treaty.

Senator COHEN. In the past there have been a number of allegations that the Department of the Interior has pursued rather indifferent or inconsistent policies so far as management which is having a negative impact upon steelhead stocks.

For example, policies of the Bureau of Reclamation that would provide water without really considering if this was going to have a negative impact upon migrating salmon and steelhead. The logging practices of the Bureau of Land Management were criticized as contributing to the destruction of the habitat.

What is being done by the Interior to deal with these two allegations that the Department itself has not pursued a comprehensive policy to deal with this problem?

Mr. SAMPSEL. I believe the allegations have been proven to be correct in many instances. There is no question that the loss of habitat as a result of construction of dams and those activities carried on by the Department of the Interior and the Corps of Engineers and those in the forest practices area, but I would say that the major impact we are seeing now is the coordination within the Department as it relates to these activities.

Certainly I am not prepared to testify before the committee that we have solved all of those inter-departmental bureau and agency and territorial disputes as they relate to individual issues.

Senator COHEN. Has anything been done yet?

Mr. SAMPSEL. Yes, the commitment has been made. I would say that the greatest——

Senator COHEN. In what way has the commitment been made?

Mr. SAMPSEL. In terms of tribal review of certain types of environmental plans, the Bureau of Indian Affairs reviews new projects and existing projects.

Senator COHEN. The same kind of commitment we have so far as the funding of the enhancement act?

Mr. SAMPSEL. That is a trick question. One is processed and one costs money.

The commitment to deal with the 1980 act in terms of a dollar commitment is something I am not in a position to present to this committee today.

But I can say to this committee today that the Department of the Interior has the sincere desire to see that the coordination among its various agencies does not damage or threaten the salmon, particularly those that are associated with the treaty rights, and that clearly the language within what is referred to as Boldt II, the second phase of *United States* v. *Washington* fishing case, will further clarify for all the agencies the extent to which tribal protection of resource and habitat is to be allowed.

Senator COHEN. Thank you.

I will now yield to Senator Gorton for any opening statement or questions he would care to address.

Senator GORTON. Thank you, Mr. Chairman.

I have a short and relatively innocuous opening statement which I will not read, but will simply ask be included in the record at this point.

Senator COHEN. Without objection, it will be placed in the record.

[The prepared statement follows:]

PREPARED STATEMENT OF SLADE GORTON, U.S. SENATOR FROM THE STATE OF WASHINGTON

Today's Senate Select Committee on Indian Affairs hearing on S. 874, the Steelhead Trout Protection Act is the second hearing on S. 874 which I introduced on April 2 of this year.

The bill would decommercialize steelhead trout by designating it as a national game fish, making its commercial interstate transportation illegal under

Federal law. The bill makes the State laws and regulations governing the harvest, transportation and sale of steelhead applicable to treaty Indian fishermen and sports fishermen equally. I would like to point out that this bill in no way affects the tribes' treaty rights of access to fish at their usual and accustomed places, nor can treaty fishermen be required to pay general State licensing fees to engage in the fishery. Furthermore, this bill provides the States the flexibility to recognize unique or hardship situations that treaty tribes might find under this bill. The bill allows the States to enter into written agreements with a tribe to establish different laws or regulations as to the taking and possession—but not sale—of steelhead trout by tribal members on Indian reservations. It thus does not necessarily cut off tribes' ceremonial or subsistence fishing for steelhead.

We will be receiving testimony from the Department of the Interior, the Washington Department of Game, the Northwest Indian Fish Commission as a panel, the Columbia River Inter-Tribal Fish Commission as a panel, the Steelhead Trout Committee and the Steelhead Trout Club of Washington as a panel. The Northwest Salmon and Steelhead Council and Trout Unlimited are being represented as a panel.

I welcome all the witnesses and am looking forward to receiving your testimony. Thank you for coming today.

Senator GORTON. It is, however, appropriate for me to say, more to you and to staff than to the witnesses, that the staff memorandum outlining this bill is, in my view, both misleading and inadequate.

It is misleading in outlining the law as it was laid down by the district court judge in 1974 rather than the quite different way in which it was interpreted by the Supreme Court of the United States in 1979.

It is misleading in a way which you, Mr. Chairman, have already indicated you understand in setting out as policy the Conservation and Enhancement Act of 1980 which, of course, has not been implemented and for which we have no recommended appropriations by the administration.

It is totally inadequate in that it omits the most important single reason for the introduction of the bill, which simply was to establish in this field the most fundamental of all doctrines of American law, that individual citizens should be treated equally by the law rather than unequally.

With that as an opening statement, I do have some questions for the witness.

Who is primarily responsible for the preparation of the letter by Assistant Secretary Ken Smith, which essentially is the testimony you have given here this morning?

Mr. SAMPSEL. It would be a combination of at least three staffs: the Bureau of Indian Affairs, the Office of Trust Responsibilities, the Solicitor's Office, and the Assistant Secretary for Fish, Wildlife, and Parks, Mr. Ray Arnett. I cannot speak specifically about who did it.

Senator GORTON. Would it primarily be your office responsible for the thrust of the testimony?

Mr. SAMPSEL. The majority of the draft was probably done by the Office of the Solicitor.

Senator GORTON. In this process, who represented, in the Department of the Interior, non-Indian rights and interests? Who, if anyone, argued for the equality of treatment under the law?

Mr. SAMPSEL. Senator, it would seem to me that all three of us—the Bureau of Indian Affairs, the Office of the Solicitor, and the Office of the Assistant Secretary for Fish, Wildlife, and Parks—would be reviewing the bill in terms of the Department's legal responsibility as interpreted by the courts.

That should be the consideration of all citizens. I am not sure I understand the question.

Senator GORTON. Was that not the consideration of your trust responsibility?

Mr. SAMPSEL. Yes, that is dictated by the courts.

Senator GORTON. Did anyone within the Department argue for equality of opportunity or represent consistently and articulately the views of the non-Indians on this subject?

Mr. SAMPSEL. I am not sure I interpret the Supreme Court's decision which dictates the carrying out of our responsibility within the executive branch as being inconsistent.

I do not know if that is pro-Indian or pro-non-Indian.

Senator GORTON. That is not the question. I asked whether or not there was anyone in the Department who represented the point of view that citizens ought to be treated equally and argued that in the preparation of this testimony. The answer is yes or no.

Mr. SAMPSEL. No, I do not think anyone argued that, based upon the Supreme Court decision, that this particular issue treated all citizens equally.

Senator GORTON. Would you describe the treaty right, as you understand it?

Mr. SAMPSEL. The treaty right as it relates to——

Senator GORTON. In the Puget Sound case area and in the Columbia River.

Mr. SAMPSEL. It was determined that the tribes had, as a result of the treaty, the right to fish in common with all the citizens of the region. "In common" was interpreted by the *Boldt* decision. The ninth circuit affirmed it. The Supreme Court found it to be a quantifiable amount, 50–50, for all species.

There are other nuances to this that we can discuss, but essentially that is the law.

Senator GORTON. Who were the Indians who were entitled to take fish pursuant to these treaties?

Mr. SAMPSEL. The Indians who are allowed to take fish are those determined by the tribal governments. The treaty rights are to the tribes and not to individuals.

Senator GORTON. Does that include all Indians who live in the area?

Mr. SAMPSEL. It includes those Indians within the Case area [1] which were recognized by the court to have been entitled to that fishing right as a result of the treaties of 1855.

Senator GORTON. I will ask the question again. Does that include all Indians in the Case area?

Mr. SAMPSEL. It does not. It does not include all Indians nor does it include all Indian tribes or groups.

Senator GORTON. There are quite a substantial number in both Washington and Oregon who are not beneficiaries; right?

Mr. SAMPSEL. That is correct.

Senator GORTON. Of course, there is a "no needs" test in connection with this right.

Mr. SAMPSEL. Excuse me; I am not sure what you mean by "needs test."

Senator GORTON. These treaty rights are not related to the economic condition of a particular Indian or tribe. They simply depend on whether or not you are a member of one of the treaty tribes; is that not correct?

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[1] See map on p. 253.

Mr. **Sampsel.** Yes, that is correct.

Senator **Gorton.** Who determines membership in the treaty tribes?

Mr. **Sampsel.** Membership is determined by the tribal constitution, normally with the approval of the Department of the Interior.

In other words, the tribal membership roll is prepared and that roll is approved by the Bureau of Indian Affairs consistent with the tribal constitution.

Senator **Gorton.** Does the Bureau of Indian Affairs require any minimum percentage of Indian blood in order to become a tribal member?

Mr. **Sampsel.** Normally that is left to the individual tribes. They determine their own membership under the tribal constitution.

Senator **Gorton.** And in connection with these tribes can you desribe the range within those tribal constitutions of eligibility based on blood?

Mr. **Sampsel.** I am not eminently familiar with each of the tribal constitutions, but I am sure the tribal delegations would provide you with that information.

I would guess it runs from a minimum of a quarter degree of Indian blood to perhaps situations in which it is less than that. But I cannot be specific.

Senator **Gorton.** It could be considerably less; right?

Mr. **Sampsel.** Perhaps, not. I am not familiar with the constitutions of the tribes.

Senator **Gorton.** Senator Cohen has gone over this previously, but you are a member of this current Presidential administration; are you not?

Mr. **Sampsel.** Yes, I am.

Senator **Gorton.** How much funding has been requested by that administration for the implementation of the Conservation and Enhancement Act of 1980?

Mr. **Sampsel.** I do not believe any has been requested.

Senator **Gorton.** On one of the pages of your prepared testimony you state—and I think I can quote it—that:

> Low harvest levels are the cumulative result of a variety of factors, including excessively high estimates of harvestable surplus, to poor productivity due to environmental degradation or unreported treaty harvest by anglers or poachers.

Has environmental degradation continued to take place since the so-called *Boldt* decision in 1974 in the areas covered by this controversy?

Mr. **Sampsel.** I cannot speak specifically to direct and specific instances. But it would be my observation that, yes, there has continued to be environmental erosion of the habitat necessary for the effective reproduction of the salmon.

Senator **Gorton.** Has water quality continued to decline during that 7-year period?

Mr. **Sampsel.** Let me not speak as an expert on that, but it would be my feeling that it has. I am not technically qualified to speak on that.

Senator **Gorton.** Then I assume that means you feel that environmental statutes passed by the two States concerned, and by the United

States, are either inadequate or have not been enforced appropriately; is that right?

Mr. SAMPSEL. That is an interesting question. I am not sure that environmental laws necessarily cover all the reduction within the habitat.

Waterflow and the necessity for certain types of hydroproduction from the Columbia system, if I may turn to that for a moment, is an example. There is the distinction between the dams that are regulated under the PUD's—public utilities division—and those within the Federal system, and there is the need for certain types of fish flows within the main stem of the Columbia and Snake River which have never been agreed to by the affected States and the Federal entities.

So, I think there are environmental things that have not happened that lead to the degradation of the fish habitat.

Senator GORTON. Since 1974?

Mr. SAMPSEL. Yes, there have been conferences after conferences, that I have been aware of, in the last 10 years that have not led to adequate flow of fish nor necessarily that of protection.

Senator GORTON. Has the administration, of which you are a part, recommended any additional environmental statutes or asked for additional enforcement authority in connection with the preservation of water quality in the Pacific Northwest?

Mr. SAMPSEL. That is an excellent question. I am not aware that the Federal Government has asked for additional statutes nor am I aware of what the respective States may have done in relationship to this water quality question.

But I am talking about a lot of degradation which is not necessarily just relationship to water quality.

We are talking about individual logging operations, some of which both States have excellent laws in terms of timber management practices.

Senator GORTON. Have those practices deteriorated since 1974?

Mr. SAMPSEL. Not necessarily deteriorated. Let us say that the compliance might not be at the highest level desirable.

Senator GORTON. But you have not recommended any increased statutes or enhancement of enforcement authority in connection with those practices?

Mr. SAMPSEL. No, sir. Both of those laws are State and not Federal laws.

Senator GORTON. What percentage of the anadromous fish in the *Boldt* area, or the case area, are made up of steelhead as opposed to salmon?

Mr. SAMPSEL. I do not have the information, but the U.S. Fish and Wildlife in the Department of the Interior will provide that as soon as we finish our testimony.

Senator GORTON. Did you participate in preparing the testimony which you have just given?

Mr. SAMPSEL. Yes, I did.

Senator GORTON. And you do not know the ratio between the salmon and steelhead?

Mr. SAMPSEL. I would be happy to look it up, but it does not come off the top of my head.

Senator GORTON. Is it 50–50?

Mr. Sampsel. May I defer to departmental people? I am told it is 10 percent.

Senator Gorton. Would you be surprised to learn that it is much less than that?

Mr. Sampsel. Yes, I would.

Senator Gorton. Is it not true that the Supreme Court decision in 1979, on this subject, briefly summarized and stated that the treaty Indians were entitled to a fair share of the anadromous fish and that that fair share was an amount necessary to provide them with a moderate living but not to exceed 50 percent of the anadromous fish?

Mr. Sampsel. I am familiar with the wording of the final Supreme Court decision; yes.

Senator Gorton. Is that a fair summary?

Mr. Sampsel. It is a summary. I would assume it is fair. As I recall, you argued that case, so I will not question your summary.

Senator Gorton. You are perfectly free to question my summary. I want to know the basis upon which you have made the decisions which resulted in your recommendations to us.

Mr. Sampsel. The recommendations are based upon the fact that if we decommercialize the steelhead, then it is my testimony which states that would be considered to be an abrogation of the treaty.

That is part of what the Supreme Court said; that that was for all of the anadromous fish and that the language which was used is, in fact, correct in what the Court said.

Senator Gorton. If, then, the percentage of the anadromous fish—that is, the steelhead percentage of the anadromous fish was 10 percent or less, and if the treaty entitlement is to a moderate living but not to exceed 50 percent of the anadromous fish, then is it not administratively quite simple to pass this statue and to provide the Indians with a moderate living not to exceed 50 percent of the anadromous fish without any commercial catch of steelhead at all?

Mr. Sampsel. We do not believe so.

Senator Gorton. Why not?

Mr. Sampsel. I believe we have stated that in our testimony. But I would be happy to go over it again.

We have what we believe to be a very firm treaty right and that treaty right has been upheld by the Court and the language you cite notwithstanding. To abrogate or to take that would constitute a taking.

I am not sure how you would calculate the value of that taking and would not choose to second guess the Court of Claims. So, I do not see it strictly as a simple administrative procedure.

Senator Gorton. You do not think then that Indians could be entitled to 50 percent—even as much as 50 percent—of the anadromous fish and catch 50 percent of the anadromous fish on a commercial basis without a commercial catch of steelhead?

Mr. Sampsel. No, I believe the evidence that will be presented based upon the specific——

Senator Gorton. Let us take your figures. If 10 percent of the anadromous fish are steelhead, then 90 percent are salmon?

Mr. Sampsel. That may be true if you take all of the totals, but what we need to think about——

Senator Gorton. Answer my question. Let us say 90 percent are salmon.

Mr. SAMPSEL. If 10 percent are steelhead, then 90 percent are something other than steelhead.

Senator GORTON. If Indians caught five-ninths of the salmon, they would then catch half of the anadromous fish; would they not?

Mr. SAMPSEL. If that could be done at all the usual and customary places with respect to treaty rights of each of the individual tribes, then, yes.

However, that is not the case. That does not allow for that to take place.

Also, in the testimony, I talked about the fisheries and the fact of protecting the steelhead and maybe not going after the targeted species.

But there is the need to be able to harvest that resource.

Senator GORTON. Do you know how the States of Washington and Oregon treat that problem today for non-Indian fishermen?

Mr. SAMPSEL. The incidental catch of steelhead?

Senator GORTON. Yes.

Mr. SAMPSEL. No, I am not familiar with that. I have been away from the issue for a couple of years and I am not familiar. I used to know.

I always found it amazing that there was never a commercially non-Indian caught steelhead below Bonneville Dam and they were never reported. That could have just been because they were able to do something different. But I always found that to be an amazing statistic.

So I am not familiar with the current situation.

Senator GORTON. As I remember, and I am stronger on Washington than Oregon, Washington simply requires any of them to be thrown back that are alive. Oregon simply does not allow them to be sold commercially but that they have to be given away or used for charitable purposes and the like.

Is there any reason why Indians could not fish commercially on a mixed stock and catch and sell all the salmon without being allowed to sell the steelhead?

Is there any management reason that that would be impossible?

Mr. SAMPSEL. Is there a management reason why the steelhead caught by the Indians could not be simply thrown away or given away to somebody?

Senator GORTON. That is right; that is the question.

Mr. SAMPSEL. Not any management reason, but I certainly would think that would be inconsistent with the treaty which allowed them to fish commercially, and would lead me to think in conclusion that it would be an abrogation or a taking.

Senator GORTON. Let us go back to the treaty itself. Would you show me, where in the bill does the bill simply assume that this is a taking, or treats the bill as a taking?

Mr. SAMPSEL. I would assume it is under section 6.

Senator GORTON. I will read you the lines in section 6. Line six reads: ". . . which seek compensation for an alleged taking of Indian treaty rights arising under or growing out of this act."

Is that a clear statement that the sponsors of this bill believe this to be a taking? Or is it just that they want to be able to make such a claim?

Mr. **Sampsel**. I am not sure exactly what the sponsors necessarily meant to say.

Senator **Gorton**. You just got through telling me in your opening statement what the meaning was.

Mr. **Sampsel**. I felt the language indicated the appreciation that there would be a taking. If it were simply the sponsor's intent that it be recognized; that the Indians be allowed to make such a claim, then I would stand corrected by the sponsor of the bill.

Senator **Gorton**. What was the value of the commercial Indian catch from steelhead either in the Columbia River or in the *Boldt* case area, or both, from 1979 and 1980?

Mr. **Sampsel**. I do not know that number in breakdown nor am I familiar with the tribes' breakdown of the economic take on the basis of individual species.

If they do, perhaps the gentleman from the Commission can give you that economic data. We do not have that data, to my knowledge.

Senator **Gorton**. Do you have the value of the commercial take of salmon and the exercise of Indian treaty rights?

Mr. **Sampsel**. I am informed that we do not.

Senator **Gorton**. And yet, in your testimony, you do say that most of the treaty tribes have become increasingly dependent on steelhead as a major income resource.

Mr. **Sampsel**. That is based upon certain tribes that are having to deal more with the taking of the steelhead; that is, are taking more steelhead than they are taking from other stocks because of declining stocks.

Senator **Gorton**. You assert that low harvest levels are the accumulative result of a variety of factors, including excessively high estimates of harvestable surplus.

Who have made those excessively high estimates?

Mr. **Sampsel**. I think it works in a couple of ways. We get those assessments of what the runs' strength is going to be. Those have primarily been by the State. Actually, I suppose, a more accurate statement would be excessively high or low estimates depending upon the management situation.

Tribal members tell me that low estimates of the steelhead run are made so that for conservation reasons others species can be held because of the stock fishing.

The main reason, however, is not necessarily to run estimates or cumulative estimates. If we want to take the No. 1 thing out of there, I think we covered that. That is the fact of the environmental issues.

Senator **Gorton**. Thank you, Mr. Sampsel. But my question was this.

On the basis of your testimony, which lists the first of these variety of factors; excessively high estimates of harvestable surplus—the question is: Who made those excessively high estimates?

Mr. **Sampsel**. Biological technical staffs, as I recall the situation out there. Those would be made with the combination of U.S. Fish and Wildlife input, as well as State biological agencies probably within the Washington Department of Fish and Game.

Senator **Gorton**. In the State?

Mr. **Sampsel**. Yes.

Senator GORTON. Are you aware of a lawsuit brought this summer, in connection with salmon, by the Indian tribes which succeeded in getting a considerably larger harvest on the basis that the State was making those estimates far too low?

Mr. SAMPSEL. Yes, I am aware of that.

Senator GORTON. So, in this case, if anyone is wrong, it will be the Indians who will have made too high an estimate of harvestable surplus; right?

Mr. SAMPSEL. Yes, I suppose it depends—that is correct. Based upon what you are getting to at this point, but let me state this.

We have mentioned the 5-year plan. I know you are aware of that. But the run estimates and the target size for that particular run within the Columbia River was a return to the river of 300,000. This did not include steelhead, but involved other species of fish.

I know of no time in which the estimated run size has ever reached that which was initially interpreted to be there by the biologists of both the States of Oregon and Washington.

And, I might add, it was sometimes with the technical agreement of the U.S. Fish and Wildlife Service.

Those run sizes, which were supposed to be managed to reach 300,000, have in the entire 5-year time frame of that particular management agreement always been estimated high. That high estimate of surplus has allowed for declining fishery. That declining fishery has impacted the native and Indian fishermen tremendously.

Then, you end up with a situation in which you have exceedingly low estimates of steelhead being returned. In that particular fishery that low estimate has resulted in a nonfishery.

The lawsuit said of those fisheries, as I understand it, that the estimates of the return were lower than it should have been.

It also said that the tribes sued to get a chance to fish in what they believe to be a biologically stronger run and the other fisheries would then desist them.

Senator GORTON. We have an awful lot of different entities which are part of the management of the fisheries out there; do we not?

Mr. SAMPSEL. Essentially three or four.

Senator GORTON. That is a pretty good number. What are those three or four?

Mr. SAMPSEL. Within the Columbia you have the Compact Commission, which set the seasons and regulations based upon the technical advice of the tribes and the Fish and Wildlife Service. In other words, the Federal fish management agencies and their own State staffs. That is normally done in the compact meeting.

The fisheries that are within the Puget Sound areas are done under a management plan with the regulations agreed to.

I think it may look like it is more complicated on paper than it actually is. It seems to be working reasonably well.

Senator GORTON. Our people would be delighted to hear that news. In any event, you have the Federals, the State, the tribes, and the courts.

Mr. SAMPSEL. The courts have been doing more of the management in the last few years.

Senator GORTON. You, I take it, think that you can have multiple management of this sort and have it on a rational basis and come up with rational answers.

Mr. **Sampsel**. Yes, I think you can have comanagement between the tribal entities and the States as it relates to the fisheries.

Senator **Gorton**. You have a paragraph in your prepared statement which repudiates the so-called multiplier argument in favor of the greater economic value of the steelhead as a game fish than as a commercial fish. I think I am fair in saying that the key to that paragraph is:

> Since an appropriate multiplier is not used in assessing the value of steelhead caught in the commercial fishery, therefore this is invalid.

Can you tell me what the multipliers would be in connection with the commercial fishery? Will the commercial fishery go on if it costs more to catch the fish than the fish is worth?

Mr. **Sampsel**. I am not sure an economic model has been done for that. I suppose the proper term for that would be to assume the cash outlay as a multiplier, such as the out-of-pocket expenses, and the economic benefit of that, as it relates to determining the sport's catch——

Senator **Gorton**. Basically people fish commercially, whether they are Indians or non-Indians, because they can make money doing it; do they not?

Mr. **Sampsel**. That is correct.

Senator **Gorton**. That is not the motivation in the sports fishery; is it?

Mr. **Sampsel**. No.

Senator **Gorton**. Therefore, most sport fisheries—I do not think steelhead are the only ones—but I suppose trout in the Rocky Mountains are the same, but the cost of the sportsmen going out and catching the fish is greater than the commercial value of the fish; is it not?

Mr. **Sampsel**. Greater, if you are talking about a sportsman going out and spending $100 to catch one steelhead, yes.

Senator **Gorton**. So there is a distinct difference between any sports fishery and a commercial fishery; is there not?

Mr. **Sampsel**. It is a distinct difference, but it is like comparing apples and oranges in an economic basis. I do not believe there is any economic basis, or that there at least has been proven in the data I have seen, which says that it is better to have x number of fishermen out fishing for steelhead than it is for the Indians to catch them commercially.

Senator **Gorton**. I do not think the bill said it was better. The argument simply was that there was a greater economic investment in one than the other. That is self-evident; is it not?

Mr. **Sampsel**. I do not believe it is self-evident. Let us take a situation in which you have an unemployment rate on some Indian reservations that runs 45 to 65 percent. I can take that piece of steelhead and I can use that as a commodity. I can sell it, and it can be traded and bartered.

No one has gone through and done that type of economic analysis to say what is the value of that steelhead. I am not sure that we want to put a dollar value on commercially caught steelhead. It is commercially caught in terms of economic impacts within the tribe.

Senator **Gorton**. The market puts a precise value on it when it is fished for commercially and sold commercially; does it not?

Mr. Sampsel. Then we are not using the same terms. We are saying that if you want to take the value of that fish in terms of what it costs the individual fishermen to buy his pole and drive there that day, and if that is the cost we are talking about, then we are talking about the lodging and the boots and the rest of it.

In other words, we do not have, to my understanding, a firm set of economic standards by which we could deal with the question you have asked.

Therefore, my conclusion stands, that we have no means by which to determine that the sports value of a steelhead is worth more than the commercial value.

I would be happy to see the evidence that would prove it one way or the other. But if we just take the out-of-pocket expense, I think it is an unfair comparison. I could not agree with the statement that, in fact, the commercial value is les than the sports value.

Senator Gorton. Thank you, Mr. Chairman.

Senator Cohen. Before yielding to Senator Melcher, let me say one thing.

It seems to me the thrust of your initial opening statement was that this bill really is a subversion; an underhanded attempt to abrogate a treaty and rights acquired by Indian tribes in negotiation of those treaties.

Let me say, on behalf of myself, that if there is to be an abrogation of a treaty, which Congress has the power to do, then it should not be done through subterfuge or subversion or indirection, but rather outright and honestly.

That is the policy decision that Congress can or cannot make, but I do not think we should approach this legislation—and I am not going to do that—as an underhanded, indirect attempt to abrogate a treaty which was signed 125 or 130 years ago.

This goes beyond just this particular issue. I have seen it in other areas where I have a deep concern on constitutional issues as well, which we are debating with the Justice Department authorization right now, on prohibiting the Justice Department from enforcing constitutionally guaranteed rights as defined by the courts.

If we are going to take a policy decision being in opposition to that, we then ought to repeal and provide a constitutional amendment, but not do it through indirection by cutting down the Justice Department or ultimately even the courts' jurisdiction to hear such matters.

To me, there is a fundamental issue involved, so, I want to assure you and others in the room today that I will not be a part of any legislation that would seek to abrogate a treaty and do so under a false name.

It seems to me that the thrust of these hearings and the purpose behind them should be to determine whether there is a factual basis for the statement contained in the declaration of the proposed bill; that this particular species is in danger by overfishing.

If so, then what is the proper course to follow? That is the only basis in which I am currently considering this.

I yield now to Senator Melcher.

Senator Melcher. Thank you, Mr. Chairman.

This bill, S. 874, which we are dealing with today, has generated a great deal of interest as well as controversy. In light of these circumstances, I commend the chairman for scheduling this hearing. This will allow full airing of all points of view.

This is a followup, as I understand it—and I have read some of the transcript—of a field hearing held in Seattle, Wash., on June 29.

After looking at the bill and reviewing some of the testimony from the June 29, hearing record, it seems to me that there are two issues this committee must examine in considering the bill.

First, the treaties and the property rights involved and second, the economic interests of the tribes involved versus the question of sports fishing.

The bill deals with commercial versus sports fishing, I believe, and the economic interests granted as the property rights to the tribes that are weighed against the opportunity for sports fishing.

The treaties deal with steelhead and other fish in the river as a property right. I do not think there is any question about that. I do not think the bill tries to duck that or does not seem to duck that.

But, the bill clearly states and sets forth the proposition that the treaties and the Federal court decisions interpreting them:

> Had detrimental effects on sports fishing on the economics of the affected States and on the ability of the affected States to manage the species effectively and uniformly.

And continuing to quote:

> The value of steelhead trout to the economy of the game fish is substantially greater than its value as a commercial fish.

I hope the testimony presented today will enable the committee members to answer the following questions. First is the economic benefit argument as stated in the findings supported by the facts?

Second, if so, are the economic pluses to be gained by the passage of S. 874 so substantial as to warrant the abrogation of the treaty as well as the overriding of Federal courts, including the Supreme Court ruling?

Third, even if such is the case, does S. 874 provide the most equitable as well as the most sensible vehicle for resolving an essentially economic problem versus a property right?

You are testifying on behalf of the administration. The report I have, dated September 25, to the Chairman and signed by Assistant Secretary Ken Smith states in part:

> ". . . enactment of S. 874 would lead to protracted, expensive, and complex litigation which could result in a substantial money judgment against the United States."

The following paragraphs state:

> We believe the designation of steelhead as a game fish can be achieved, where appropriate, on an individual basis through agreements between the State and the affected tribes.
>
> The Columbia River treaty tribes, for example, have agreed under a 5-year management plan approved by a United States District Court, to limit take of steelhead through time and location of gill nets for the harvest of salmon.
>
> In return, the States and Federal governments have committed to improve the runs of all anadromous fish.

Mr. Secretary, while this letter is signed by the Assistant Secretary, Ken Smith, is it fair to say that that letter represents the viewpoint of Secretary Watt?

Mr. SAMPSEL. Yes, it is.

Senator **Melcher**. Is it fair that this represents the viewpoint of the administration, including President Reagan?

Mr. **Sampsel**. Yes, it is.

Senator **Melcher**. On that basis, I think then, what you are telling me is that passage of the bill as it is, or in any form close to it as it is, would result in additional litigation; is that correct?

Mr. **Sampsel**. That is correct.

Senator **Melcher**. And, that would be costly in itself in time and money to the tribes?

Mr. **Sampsel**. Yes.

Senator **Melcher**. Nowhere in this report, that I can find, do you have much of anything constructive to say about the bill. Do I misread you?

Mr. **Sampsel**. I think that is a fair reading.

Senator **Melcher**. That represents the solid viewpoint of Secretary Watt and the President?

Mr. **Sampsel**. Yes.

Senator **Melcher**. It is partially based on cost to the U.S. Treasury?

Mr. **Sampsel**. That is one of the things but not the overriding reason for the Department's position.

Senator **Melcher**. Is the overriding reason, of the Department's reasons, based on the treaties?

Mr. **Sampsel**. Yes, it is.

Senator **Melcher**. And, the property rights of the tribes involved?

Mr. **Sampsel**. That is correct.

Senator **Melcher**. But the other point is this: If these are to be abrogated by an act of Congress, there would then be substantial cost to the Treasury; right?

Mr. **Sampsel**. Yes, that is correct. There is no way we could estimate, but we think it would be substantial.

Senator **Melcher**. In terms of millions of dollars?

Mr. **Sampsel**. Yes.

Senator **Melcher**. Possibly $100 million?

Mr. **Sampsel**. No one really knows what the value is.

Senator **Melcher**. Let me conclude by saying that this administration is looking for places to save money and not to spend money.

Mr. **Sampsel**. That is correct.

Senator **Melcher**. Thank you, Mr. Chairman.

Senator **Gorton** [acting chairman]. Thank you.

For the benefit of those in attendance, Senator Cohen's presence is required on a hearing on AWACS at which the Secretary of Defense is present. He hopes he will be able to return within an hour or so. But he has asked that we continue the hearing nevertheless.

Let me pursue a couple of the questions that Senator Melcher asked.

In answer to one of my questions just before Senator Melcher came in, you told me that you do not know the value of the commercial steelhead catch of any recent year.

Mr. **Sampsel**. That is correct.

Senator **Gorton**. So it goes without saying that you do not know what kind of value would be awarded by a court in connection with a treaty obligation if this were found to be a treaty obligation; is that right?

Mr. **Sampsel**. We cannot specify the dollar amount, but the belief is that the award would be substantial. In other words, we do not consider it to be a small amount.

Senator **Gorton**. It probably would be a multiplier of that annual value; would it not? Is that not the usual method of computation for what amounts to condemnation?

Mr. **Sampsel**. I am not sure what the normal situation is that the Court of Claims would take on a recently adjudicated claim. I am not trying to avoid the question. I do not want to answer something I do not feel qualified to answer.

Senator **Gorton**. Your Department has not researched that and does not know; right?

Mr. **Sampsel**. We do not know.

Senator **Gorton**. On page 3 of Mr. Smith's letter you speak of section 2(6) of the bill which deals with the right to license sportsmen to fish for steelhead on Indian lands.

You raise certain questions about that and then in the next paragraph you speak of a court decision that allows tribes the right to exclude nonmembers from hunting and fishing on tribal trust lands and probably on alloted lands as well.

The language of this bill is considerably broader than that in authorizing certain Indian actions within the exterior boundaries of whether they are trust lands or alloted lands, and for that matter, fee lands; is that not right?

Mr. **Sampsel**. The bill does go further; yes.

Senator **Gorton**. Is there any court decision, of which you know, that allows Indian tribes to prohibit hunting and fishing on fee lands within the exterior borders of reservations?

Mr. **Sampsel**. My experience is not legal, but there are none that I know of.

Senator **Gorton**. How about your associates?

Mr. **Sampsel**. Do we know of any? I am informed we do not know of any, Senator.

Senator **Gorton**. You state that section 4 is unclear as to whether the tribes will have the right to exclude sports fishermen for trust lands or merely whether the bill would grant sports fishermen the right to fish on these lands as long as they pay an appropriate tribal fee.

Is the thrust of your opinion that this bill somehow may require tribes to license non-Indians to fish within Indian reservations?

Mr. **Sampsel**. I suppose the question is left unclear in our minds as to whether or not it does, in fact, limit. Perhaps I have said it better in my prepared statement than I can say it off the top of my head, but it seems to me there is a clear question as to whether or not the act simply says that non-Indians are allowed to, if they have the proper license, or——

Senator **Gorton**. Does not the right to license automatically include the right to exclude simply by not granting the license?

Mr. **Sampsel**. I do not know.

Senator GORTON. Then would you suggest language to the committee that would make that clear? I think it is quite obvious.

Mr. SAMPSEL. I would be happy to suggest language that would make that section clear or in terms of what language might be acceptable to clarify that issue if, in fact, it was enacted.

Senator GORTON. Thank you.

Without objection, that material will be inserted in the record at this point.

[Subsequent to the hearing the following information was received for the record.]

We suggest the following language be added at the end of section 4(a):

"*Provided*, That nothing in this Act shall be construed to require any tribe to issue such licenses. Any compensation which may be due to the tribe under section 6 of this Act shall not be offset by the amount of income allegedly foregone as a result of a tribal decision not to issue licenses."

Senator GORTON. On the next page, also dealing with section 4, you speak of a number of decisions, one of which apparently was vacated by the U.S. Supreme Court relating to whether or not the State can require its own licenses to be purchased for hunting and fishing anywhere within the State including on an Indian reservation.

You state after those citations, and I quote: "Congress ought not to allow States to impose such fees when their legal status is uncertain."

Why is their legal status uncertain? Does not Congress have the clear right to prohibit States from imposing a license fee for such hunting and fishing?

Mr. SAMPSEL. To prohibit?

Senator GORTON. Yes.

Mr. SAMPSEL. Yes, it does.

Senator GORTON. Does it not have a clear right to permit States to require licenses to be purchased under those circumstances?

Mr. SAMPSEL. Yes.

Senator GORTON. Then why in the world should not Congress legislate in this area? You have criticized the extensive and protracted litigation which apparently has taken place in these cases because the law is uncertain.

Who is better capable of making it certain more quickly than the Congress? If you think it is uncertain because States should not be allowed to do so, then why do you not recommend the legislation to make that clear?

You criticized Congress for trying to make the law clear where it is not.

Mr. SAMPSEL. Because, Senator, it seems to us and to me, that what we are talking about today as related to this bill, S. 874—and we can subdivide it into sections and talk about this particular section and talk about the rewriting that would make it clear and so on—is the overall impact of the implied recognized—and we disagree on that—taking of a property right from Indian people.

While I totally recognize, as does everyone in this room and yourself and the other members of this panel were they present, the right of the Congress to abrogate or to take or to change or to modify a treaty, it would be our sincere belief that you not exercise that privilege in relationship to this and/or clarify the individual State laws as they relate to the trust acts nor do the things outlined in this bill.

We believe it to be an erosion and an abrogation. I believe that to be the overriding impact of this piece of legislation.

Senator GORTON. I understand that fully, but I still do not understand why the Department should state that there is an area of the law—and in this case simply the right of the State to require hunting or fishing licenses under certain circumstances—which is unclear and which has resulted in a great deal of litigation and which Congress can settle.

Why do you recommend that we do not settle it either way? I just do not understand that. I can see that you may not want States to have that right. Under those circumstances, why do you not recommend we pass a statute? Why do you criticize us for making the law clear when it is unclear and when Congress has the right to clarify?

Mr. SAMPSEL. If it would be the intent of the legislation to modify it in such a way as to make it clear, then perhaps on that particular point you would get a different answer.

Senator GORTON. Would it be the recommendation of your Department that Congress simply prohibit States from requiring license fees to hunt and fish on Indian reservations?

Mr. SAMPSEL. I am not sure that would be the case as it relates to all individual treaties and agreements. But by exercising that right with the State having the right to impose State laws on individual trust lands and reservations, there are situations in which that directly erodes the concept of the effectiveness of the individual tribal governments.

It is that erosion that I think I am concerned about in this particular case.

I cannot speak specifically. I do think the issue is unclear based upon the individual tribes. I am not sure that is best left to the courts. The Congress has the power to clarify, but I would urge that we not do that.

Senator GORTON. Either way?

Mr. SAMPSEL. No. Individual tribal governments have individual laws and rules and individual standards. Sometimes we do a great disservice to Indian people and perhaps to our dealing with them by trying to group them as Indian people or as a single tribe or entity.

Senator GORTON. Let me make sure that you do not even want Congress to pass a statute telling States to keep out of this business on Indian reservations under any and all circumstances.

Mr. SAMPSEL. I could research it and make a recommendation to the committee or to the Senator directly at a later date. But I am not prepared to discuss that in detail now. I certainly would be willing to take it up with our Solicitor's Office and the Justice Department to see if that is something they think would be appropriate for Congress to do.

Senator GORTON. Would you describe the litigation, which is known generally as the *Boldt* decision, as having been protracted and expensive?

Mr. SAMPSEL. Yes.

Senator GORTON. Is it over?

Mr. SAMPSEL. No, I do not believe so. We still have continuing jurisdiction within the case and we still have phase II that has not been completed.

Senator GORTON. Is it likely to continue to be protracted and expensive?

Mr. SAMPSEL. It is likely to continue for some time.

Senator GORTON. Is it true that you do not recommend a statutory solution to the controversy of any sort which would end that litigation?

Mr. SAMPSEL. I do not; no.

Senator GORTON. What would be the subject of litigation on this bill, if it were passed, other than the amount of compensation, if any, to which the Indian tribes were entitled?

Mr. SAMPSEL. I am not sure, but surely that.

Senator GORTON. That would be the only subject, would it not, since Congress clearly has the right to pass the legislation?

Mr. SAMPSEL. It would be interesting to note that if the legislation related to the States and the licensing passed, whether or not you would end up with a situation of an erosion of a treaty right which could be litigated in a series of other court cases.

I do not know at all. I certainly can ask that one of our solicitors discuss the subject with you from a legal standpoint.

But it does appear to me that, certainly, at a minimum, you would have the possibility and perhaps the certainty of protracted litigation as it relates to the taking and the monetary compensation. Where it would go beyond that, in legal terms, I do not know.

Senator GORTON. On the last page of your testimony you speak of tribal efforts in connection with the management and particularly in the propagation of steelhead.

What is the source of the money for those efforts?

Mr. SAMPSEL. For the tribal participation?

Senator GORTON. Yes. I am talking about the tribal propagation programs.

Mr. SAMPSEL. I know that individual tribal funds are used and that funds are used under the management portion of the Washington Fishery Management portion and the Bureau of Indian Affairs in administering our trust responsibilities. There are funds made available through the Fish and Wildlife Service in the past.

I cannot give you an accumulated effect of all of this and what they would be on an individual project basis.

Senator GORTON. Is is fair to say that most of the money is Federal money? I mean through the tribes, but it is Federal money; right?

Mr. SAMPSEL. Again, I am not sure how to answer it. I am not trying to be evasive. I am thinking of the difference between the actual cost of the operation as opposed to some of the costs that may be associated with the capital construction costs.

The capital construction costs of some of the projects, of course, have been approved as line items by Congress and some as an ongoing project within the Fish and Wildlife Service. But I do not know what the total breakdown would be in terms of the operation and management of the facilities and also some of the less expensive facilities.

My judgment would be that the tribal representatives and the two commissions would be able to answer that question, but I cannot answer specifically. As for capital construction costs, it is highly Federal. The operation and maintenance costs of those facilities, I think, would be 50–50 and perhaps more on the tribal side.

Senator GORTON. Since there are many tribes and many different situations, can you prepare for and submit to the committee, beginning in the year 1974, what Federal expenditures there have been directly and indirectly for these purposes?

Mr. SAMPSEL. As it relates to fish propagation?

Senator GORTON. Yes.

Mr. SAMPSEL. Yes. Do you want it broken down by species? Are you interested in salmon?

Senator GORTON. It probably would be helpful, though your testimony relates to steelhead. That is what we primarily would be interested in.

Mr. SAMPSEL. We will emphasize that.

Senator GORTON. Without objection, that material will be inserted in the record at this point.

[Subsequent to the hearing the following information was received for the record.]

The following dollar figures reflect a close approximation of the Federal Government portion of program expenditures for steelhead enhancement. Since the programs are not established to treat steelhead trout as a special salmonid, the program costs are not maintained separately. These results constitute our best estimates.

STEELHEAD ENHANCEMENT

[Dollar amounts in thousands]

Year	BIA	FWS	Total
1974	$25.0	$24.0	$49.0
1975	38.0	17.0	55.0
1976	110.0	19.0	129.0
1977	85.0	17.0	102.0
1978	58.2	12.0	70.2
1979	139.8	75.0	214.8
1980	154.4	34.0	188.4
1981	360.0	62.5	422.5

We are also providing the following summary sheet which identifies an estimate of the steelhead program as it currently (fiscal year 1981) exists in the Western Washington Area. The steelhead trout is considered equal to all other anadromous fish. Consequently, the associated costs are not specifically itemized in terms of hours spent handling or pounds of fish food consumed. Fisheries management and enhancement programs of the tribes are all intermingled in both time and physical facilities uses.

STEELHEAD ENHANCEMENT, WESTERN WASHINGTON (1980 SEASON)

[Dollar amounts in thousands]

Tribe	Survey	In-season adjustments	Creel census	Studies	Expenditures
Hoh	Air	Yes—M	No	Scales	$19.154
Lummi	No	Historic	No	Scales—Out	21.373
Makah	Yes	No	No	No	14.472
Muckleshoot	Air	Yes—M	Yes	Scales—Out	26.782
Nisqually	Air	CPUE—M	Proposed	Scales—Out	38.438
Nooksack	No	Historic	No	Scales	10.96
Point No Point	No	Yes	No	No	29.258
Puyallup	Part	CPUE	Part	Scales—Out	13.818
Quileute	Air	Yes—M	Part	Scales—Out	43.615
Quinault	Air	Yes—M	Yes	Scales	79.361
Skagit Systems Co-op	Yes	Yes	No	No	50.16
Stillaguamish	Yes	No	No	Scales—Out	5.196
Tulalip	No	Yes	No	No	7.386
Total					358.973

Symbols:
Air=aerial survey.
M=a model has been developed.
Scales=age class analysis from scale samples.
Out=out-migration survey and analysis.
Part=partial or a portion of the area is covered.
CPUE=catch per unit effort.

Development criteria for this table is as follows:
1. Six species of fish are raised in most of the management programs.
2. Of this amount spent, there are 4 associated expenditures that augment steelhead rearing (please note column titles).
(a) Therefore, if there exists 4 programs or studies, then: (4/24) times (dollars of total tribal program) equals (dollars expended for steelhead enhancement). Note: Dollars (expenditures) represents BIA portion of program expenditures.
(b) 1/24 is derived from the division of money between 6 species and 4 programs: 1/6 times 1/4=1/24.

Method of data collection:
1. Telephone calls to the tribal biologists provided the most current status of these efforts.
2. The majority of the data can be cross checked with figures from the annual reports submitted by the tribes as part of their contractual obligations in Public Law 93–638.

Senator Gorton. I believe that is all the questions we have for you. I want to thank you for your testimony here today.

Mr. Sampsel. Thank you.

Senator, do you have questions relative to the technical and biological information prepared by the Fish and Wildlife Service relating to the river systems?

Senator Gorton. Yes.

Mr. Sampsel. We are prepared to give that at this time, if you would like to receive it.

Senator Gorton. I am sorry; I must have missed what you were saying.

Mr. Sampsel. The Department of the Interior's Fish and Wildlife Service's biological information requested by the committee——

Senator Gorton. Yes; that is listed as the next witness panel. We will be happy to hear it. The technical information probably could be included in the record.

But I yield to the next witness.

STATEMENT OF THOMAS PARISOT, DEPUTY ASSOCIATE DIRECTOR OF FISHERIES, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH S. BOOMER, PROJECT LEADER, FISHERIES ASSISTANCE OFFICE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, OLYMPIA, WASH.

Mr. PARISOT. Thank you, Mr. Chairman.

We can submit this for the record and if there are any particular questions you would like to address to us, we are available.

Senator GORTON. How long is your presentation?

Mr. PARISOT. My prepared statement is several pages. My analysis is about three pages long.

Senator GORTON. We will include the detailed backup, but go right ahead with your other comments.

Mr. PARISOT. Mr. Chairman, I appreciate the opportunity to appear before you today to discuss the status of steelhead stocks found in streams in western Washington State and in the Columbia River Basin. Before discussing specific biological information, however, I would like to make a few general remarks regarding the steelhead.

With your permission, I will, as you suggest, submit my statement for the record and offer the following summary.

The steelhead trout historically ranged from southern California northward along the Pacific coast through the Gulf of Alaska. During the last century this species and its common nonanadromous form, the rainbow trout, have been distributed into suitable habitat throughout the world.

The steelhead is a rainbow trout which goes out to sea for part of its life and returns to spawn in fresh water. Two generalized races are found. "Winter-run" steelhead enter fresh water as adult fish from November to June. Peak runs usually occur in December and January. "Summer-run" steelhead usually enter fresh water from May through September. Winter-run and summer-run steelhead spawn during the same period which extends from January into late June. Both races overlap with the runs of Pacific salmon, a factor that is especially important in controlling the take of winter steelhead. Typical females will average 3,500 to 4,000 eggs respectively.

Once spawning is complete the eggs remain buried in gravel until hatching occurs. Alevins emerge from the gravel and develop into juveniles known as parr or fry. After reaching 6 to 8 inches in size at 1 or 2 years of age, the juveniles undergo a physiological transformation known as smoltification.

As a result, the juvenile steelhead are able to handle the physiological stress of life in the ocean. The process of smoltification is concurrent with the downstream movement of juvenile steelhead toward the ocean.

Steelhead will spend from 1 to 4 years in the ocean before sexually maturing to the point where they migrate to their natal streams to repeat the process of reproduction. Unlike Pacific salmon, some steelhead survive the stress of spawning and will return to the ocean to renew the cycle.

Early explorers found that salmon and steelhead used all the streams open to them throughout the Pacific Northwest. Since the mid-1800's, the environment has been changed, somewhat radically, and many streams are no longer available for steelhead use.

A classic example of this change is Grand Coulee Dam which, in 1941, closed 40 percent of the Columbia River watershed to salmon and steelhead migration. The impacts of hydroelectric development, irrigation diversion, logging, mining, grazing, road construction, and overfishing have been recognized as contributing factors to the historic declines of anadromous fish.

To compensate for the losses from natural production, an extensive hatchery system has developed which includes State, Federal, and tribal facilities.

The first hatchery on the west coast opened in the fall of 1892 on the McCloud River, Calif. Construction on new facilities continues today.

Let me turn now to the status of the steelhead in the Puget Sound and coastal Washington. First, with regard to hatchery production of steelhead, since 1960 at least 26 hatcheries and 32 rearing ponds or net pens have been in operation.

Between 1960 and 1976 these facilities released in excess of a total of 24 million winter steelhead and nearly 4 million summer steelhead into coastal Washington and Puget Sound waters.

Assuming a return of 3 percent, hatchery production alone has made over 840,000 adult steelhead potentially available for harvest.

During the same period, recreational fishermen harvested in excess of 1,183,000 steelhead and the Indian harvest took just over 399,000 steelhead. From 1976 to 1980 the recreational harvest has taken about 229,000 steelhead and the Indian fishery has taken about 188,000 steelhead.

All catch figures have been provided by Washington Department of Game and may be subject to minor changes for the more recent figures. Production figures for 1960–76 were published by the National Marine Fisheries Service.

At your request we have compiled the Indian and recreational catches from the rivers fished by five Indian reservations in the Puget Sound and coastal Washington area. These data are provided in table 1.

I want to emphasize the data is limited. It is mostly based on estimates of catch, and data is missing for various years and in the various waters that we discussed.

Information on the run size, a critical factor in making determinations, is, for the most part, almost nonexistent.

The data that we use in catch statistics are derived from information from the State agencies of Washington, Idaho, and Oregon.

For your information, we have included the Washington Department of Game's estimated landing value of the Indian catch as well as the estimate of the total recreational catch for the corresponding time and location.

The sources of these data are identified in table 1 attached to my statement. Table 2 provides the total treaty and recreational catches for the area from 1961 to 1980.

Historical statistical records are provided in tables 3, 4, and 5, for the Nisqually, Hoh, and Quinault fisheries, respectively.

I would ask at this time that the information attached to my prepared testimony be placed in the record.

Senator GORTON. Without objection, that will be placed in the record at this point.

[The attachments follow. Testimony resumes on p. 59.]

Table 1. Summary of Steelhead Landings from 5 Selected Fisheries in the Boldt Case Area, 1974-75 to 1979-80

Treaty Tribe	River		1974-75		1975-76		1976-77		1977-78		1978-79		1979-80		1980-81		1981-82	
			Catch	%	Catch	%	Catch	%	Catch	%	Catch	%	Catch	%	Catch	%	Catch	%
1. Puyallup	Puyallup	Treaty	2237	48	3996	75	1689	47	147	3	256	8	22	1				
		Sport	2376	52	1364	25	1895	53	5532	97	3134	92	2188	99				
2. Steelhead releases															50,000			
Nisqually	Nisqually	Treaty	4345	83	3674	93	2568	87	2920	82	2605	64	1332	32				
		Sport	884	17	282	7	388	13	632	28	1466	36	2798	68				
Steelhead releases																		
Quillayute	Quillayute	Treaty	10310	71	9621	80	7029	86	9062	72	7964	78	6125	43				
		Sport	4298	29	2453	20	1110	14	3701	28	2189	22	8055	57				
Steelhead releases																		
Hoh	Hoh	Treaty	2946	74	3186	81	4210	81	4016	76	3328	70	3192	62				
		Sport	1043	26	730	19	973	19	1274	24	1403	30	1996	38				
Steelhead releases									34,000		22,000						44,000	
Quinault	Queets	Treaty	5889	92	4734	97	2446	93	3732	93	2423	83	2405	79				
		Sport	541	8	134	3	195	7	289	7	486	17	635	21				
	Quinault	Treaty	4753	92	4183	95	3562	94	8828	99	3775	96	4707	97				
		Sport	418	8	222	5	222	6	120	1	143	4	160	3				
Steelhead releases					341,400		236,000		133,000		418,000		346,000		890,000			
3. Commercial value of Indian harvested steelhead in Boldt Case Area	Total No.		69,906		64,078		42,112		57,575		47,090		47,263					
	Total Wt.		559,240		512,624		336,892		460,600		376,720		378,104					
	Gross Value		$559,240		768,936		589,568		921,200		809,948		850,734					
4. Sport Harvest	Total No.		60,200		29,900		32,200		69,100		57,100		70,900					

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1. Compiled by Washington Department of Game
2. Compiled by Northwest Indian Fisheries Commission
3. Presented by Jack Ayerst, Chief of Fisheries Management, W.D.G. In Trout the official publication of Trout Unlimited. Vol. 22(1):7-14.
4. Compiled by Washington Department of Game

TABLE 2

TREATY AND SPORT HARVEST OF STEELHEAD FROM 1961 TO 1980 IN THE U.S. V WASHINGTON CASE AREA [a]

YEAR	SPORT HARVEST	TREATY HARVEST[b]	TOTAL
1961-62	79,100	18,000	97,100
1962-63	85,900	21,700	107,600
1963-64	113,200	21,600	134,800
1964-65	80,400	18,000	98,400
1965-66	108,700	18,000	126,700
1966-67	100,000	18,000	28,000
1967-68	103,700	18,000	121,700
1968-69	86,600	18,000	104,600
1969-70	49,300	18,000	67,300
1970-71	77,100	17,300	94,400
1971-72	94,600	27,500	122,100
1972-73	55,400	25,000	80,400
1973-74	58,900	35,600	94,500
1974-75	60,200	61,400	121,600
1975-76	29,900	57,000	86,900
1976-77	32,200	42,500	74,700
1977-78	69,700	49,700	119,400
1978-79	57,100	47,000	104,100
1979-80	70,900	48,800	119,700

[a] The U.S. v Washington Case Area includes Puget Sound and the Washington coast north of and including Grays Harbor.

[b] Data prior to 1974 is incomplete due to the lack of an accurate catch reporting system. No data was collected between 1964 and 1970 and the numbers presented are estimated developed by WDG. The data from 1974-75 through 1977-78 was compiled by the USF&WS. Data after 1978 was jointly compiled by WDG and the treaty Tribes

5-

PUYALLUP RIVER

The Puyallup River originates on the southwest slopes of Mount Rainier. It moves northwest through a narrow valley before receiving the Mowich River from the east. The river then flows through a narrow canyon, downstream from Electron to the Carbon River confluence. The Carbon also originates on the rugged slopes of Mount Rainier and courses northwest to its junction with the Puyallup. Steep gradient, large rock, and numerous cascades characterize its upper reaches.

Downstream from the Carbon, the Puyallup meanders generally north to the confluence of the White River at Sumner. The White also heads on Mount Rainier. flowing generally north to Greenwater and then generally west to Buckley. Downstream from Buckley, the river meanders north-westerly to Auburn then south to Sumner. The Muckleshoot Indian Reservation is located along the White River near Auburn.

Finally, downstream from the White River, the Puyallup courses west-northwest and ultimately empties into Commencement Bay.

Spawning and Rearing Habitat

In several locations the Puyallup exhibits pool-riffle areas which provide good spawning and rearing habitat. These areas are prominent at the confluence of the Carbon River and the White River. Occassional pool-riffles exist near Buckley, while the lower section of the river downstream from Buckley provides considerable pool-riffle area. Finally, numerous such sites conducive to anadromous and resident fish production can be found in the area near Commencement Bay.

Habitat Degradation

Development of the river has resulted in adverse impacts to fish reproduction and migration due to flow and sedementation problems. The Puget Sound Power and Light's Electron diversion dam is located a short distance downstream from the Mowich River and serves as a barrier to anadromous fish migration. Wide ranging fluctuations and periodic drying conditions corresponding to power operations occur in the eight mile stretch below the diversion dam downstream to the powerhouse. Periodic flushing of the power facilities also contributes considerable silt to the system. Two water - development projects, Mud Mountain Dam and Buckley Diversion Dam, are located on the river near Buckley. Operation of the dams causes periodic flow problems both on the Puyallup and the White Rivers.

Industrial development has also taken its toll. Nearly 4,270 acres of Commencement Bay wetlands have been filled for industrial uses. Discharges from pulp mills, smelters and other industrial effluents have depressed water quality.

NISQUALLY RIVER

The Nisqually River headwaters are from glacier fields on Mount Rainier. It then flows about 72 miles to Puget Sound north of Olympia. The lower reaches of the river is bounded on one bank by Fort Lewis Military reservation and on the other by the Nisqually Indian reservation. The Nisqually delta is managed by the U.S. Fish and Wildlife Service as a wildlife refuge.

Environmental Status

The City of Tacoma's Alder and La Grande dams block anadromous fish use of the upper 30 miles of the system. At river mile 25, flows are diverted through a power canal for 14 miles before the river reenters the river. There are extensive logging operations in the upper watershed. Low and fluctuating flows from the operation of the reservoir and the diversion limit steelhead production by an estimated 25%. Glacial silt fills the reservoirs during the spring and summer and is flushed into the river in the winter. During the periods of high silt loading steelhead are not vulnerable to most fisheries. The sport catch greatly improves in the early spring towards the end of the run when the river clears. The increased spring sport effort has changed the division of catch from predominantly tribal in the mid-seventies to 32% tribal in the 79-80 season. (Table 3)

The run appears to be vigorous and is one of the strongest native winter runs in the state.

TABLE 3

HISTORICAL CATCHES BY INDIAN AND RECREATIONAL FISHERIES ON THE NISQUALLY RIVER, WASHINGTON

YEAR	REPORTED INDIAN HARVEST	%	PUNCH CARD SPORT HARVEST	COMBINED TOTAL
1935-36	1110			
1936-37	1331			
1937-38	1268			
1938-39	1325			
1939-40	1780			
1940-41	1363			
1941-42	1140			
1942-43	1579			
1943-44	1352			
1944-45	1835			
1945-46	254			
1946-47	275			
1947-48	378	71	154	532
1948-49	278	17	1374	1652
1949-50	258	41	364	622
1950-51	356	45	427	783
1951-52	471	13	3133	3604
1952-53	555	15	3146	3701
1953-54	1155	20	4615	5770
1954-55	864	16	4597	5461
1955-56	1325	29	3312	4637
1956-57	1725	36	3004	4729
1957-58	1485	29	3714	5199
1958-59	1356	34	2609	3966
1959-60	1626	32	3529	5155
1960-61	1626	39	2494	4120
1961-62	1155	39	1804	2959
1962-63	1335	45	1633	2968
1963-64	728	22	2628	3356
1964-65			1162	
1965-66			2605	
1966-67			2958	
1967-68			2441	
1968-69	2460	47	2810	5270
1969-70	1938	59	1346	3284
1970-71			1661	
1971-72	7452	92	637	8089
1972-73	4405	82	968	5373
1973-74	5412	95	285	5697
1974-75	4864	85	843	5707
1975-76	3776	94	238	4014
1976-77	2729	76	860	3589
1977-78	2231	82	1157	3388
1978-79	2595	64	1414	4009
1979-80	1332	32	2798	4130

QUILLAYUTE RIVER SYSTEM

QUILLAYUTE RIVER

The Quillayute River is formed by four major tributaries, the Bogachiel, Soleduck, Calawah, and Dickey Rivers, and is approximately 5.6 miles long.

All tributaries originate in the Olympic Mountains, except the Dickey River, which originates in the Coastal Range. The Quillayute River enters the Pacific Ocean at the community of La Push, Washington. The Quillayute is a meandering river, characterized by slow moving glides and deep pools. The Quillayute River flows for 2.5 miles through the Olympic National Park and 1 mile through the Quileute Indian Reservation at its mouth.

Environmental Status

Improper installation of road culverts and log and debris barriers may periodically limit access to tributaries of the Dickey River. Low flow is a general limiting factor throughout this area. Flows affect rearing and spawning in tributary streams and the upstream migration.

The Washington Department of Game has been stocking the Quillayute system with both summer and winter steelhead for several years, as shown below:

		NUMBER	
YEAR	TRIBUTARY	WINTER	SUMMER
1975	Bogachiel	67,500	
	Calawah	20,000	
1976	Bogachiel	67,220	
	Calawah	30,277	
1977	Bogachiel	74,500	
	Calawah	35,000	11,400
	Soleduck	35,000	47,260
1978	Bogachiel	71,140	
	Calawah	25,000	17,384
	Soleduck	35,000	40,048
1979	Bogachiel	84,500	
	Calawah	15,000	15,960
	Soleduck	50,000	40,014

HOH RIVER

The headwaters of the Hoh River originate from the snow fields of Mount Olympus on the Olympic Peninsula. The Hoh River flows for 56.5 miles in a westerly direction before entering the Pacific Ocean, midway between the communities of La Push and Klalock. The North Fork of the Hoh flows in a westerly direction for 26.6 miles where it is joined by the South Fork. The North Fork is characterized as braided stream with a wide gravel bed and many intermingling channels creating numerous pools and riffles suitable for fish use.

The North Fork converges with the South Fork just inside the Olympic National Park boundary and from there the Hoh maintains a stable river bed with many large pools and riffles suitable for fish use. The Hoh Indian Reservation is located at the mouth of the river.

Stream flow--Seasonal flooding occurs in most of the drainage area, but it does not normally result in excessive damage to the fisheries resource of this basin.

Seasonal low flows occur in virtually all of the streams and are most detrimental to fish life in the smaller tributaries by limiting the amount of rearing area available. These flows are generally from natural causes since stream diversions for other water uses are presently limited to a small number of streams. Some smaller streams go dry durinq extensive rainless periods in the summer.

Physical barriers--A number of streams in this basin have physical barriers which inhibit or delay migration to potential spawning and rearing areas. Most of these barriers are natural features consisting of falls, cascades, and beaver dams. Log jams, composed of both natural and logging debris, are also problems in many streams.

Some barriers have resulted from construction activities, but only one dam blocks significant spawning area. A number of small tributary streams are blocked by improper culverts on county, state, and private roads. Culverts not properly installed often create outfall drops and velocities sufficient to prevent upstream passage of adults.

Water quality--Water quality is generally good throughout this basin. Excessive siltation occurs in streams where extensive logging and road construction have denuded the stream bank and domestic wastes are discharged into many of the streams of the basin although present waste levels are not known to be deterimental to steelhead production. High water temperatures during the summer months are found in streams where extensive logging has removed stream bank cover.

HOH RIVER

Limited spawning and rearing--Virtually all of the streams in this basin had sufficient spawning area in their pristine condition, but siltation from logging and road construction has resulted in compaction of the spawning gravel and decreased intra-gravel flow in many tributaries. Tributaries are particularly important as steelhead spawning areas. This seriously limits the success of natural spawning and rearing in these areas. Historical catches are provided in Table 4.

Hoh steelhead have been enhanced by winter-run smolt plants from both the Washington Department of Game and the U.S. Fish and Wildlife Service's Quinault National Fish Hatchery, as shown below.

YEAR	WDG	USFWS
1975	24,000	
1976	28,004	
1977	51,500	
1978	39,505	34,000
1979	44,500	22,000

TABLE 4

HISTORICAL CATCHES BY INDIAN AND RECREATIONAL FISHERIES ON THE HOH RIVER, WASHINGTON

(SOURCE: Washington Department of Game)

YEAR	REPORTED INDIAN HARVEST	%	PUNCH CARD SPORT HARVEST	COMBINED TOTAL
1943-44	1217			
1944-45	630			
1945-46	934			
1946-47	731			
1947-48	1066	63	636	1702
1948-49	3461	67	1680	5141
1949-50	1765	50	1235	3000
1950-51	2065	52	1896	3961
1951-52	1193	31	2601	3794
1952-53	2147	59	1520	3667
1953-54	2402	60	1602	4004
1954-55	2934	63	1754	4688
1955-56	3856	65	2124	5980
1956-57	2856	68	1339	4195
1957-58	2633	71	1090	3723
1958-59	2511	65	1383	3894
1959-60	2193	60	1447	3640
1960-61	2633	63	1545	4178
1961-62	2438	46	2895	5333
1962-63	2815	63	1662	4477
1963-64	1645	36	2914	4559
1964-65			2274	
1965-66			3184	
1966-67			1936	
1967-68			2333	
1968-69			2417	
1969-70	1874	51	1806	3608
1970-71	1702	42	2397	4099
1971-72	2588	45	3179	5767
1972-73	3776	69	1686	5462
1973-74	3444	78	982	4426
1974-75	2946	76	913	3859
1975-76	3515	84	692	4207
1976-77	4683	84	883	5566
1977-78	3919	76	1202	5121
1978-79	3305	71	1307	4612
1979-80	3192	62	1996	5188

QUINAULT RIVER

The headwaters of the mainstem Quinault River originate from the glaciers of Mount Anderson on the Olympic Peninsula. The North Fork Quinault River, a major tributary 18 miles in length, originates from the snowfields of Mounts Seattle and Christie on the Olympic Peninsula. The Quinault River flows for 65 miles in a southwesterly direction before entering the Pacific Ocean at the community of Taholah. The river originates and flows through the Olympia National Park for 32 miles until it reaches Quinault Lake, approximately midway between its source and the Pacific Ocean. The river flows from Quinault Lake for 32 miles through the Quinault Indian Reservation until it reaches the ocean.

Environmental Status

The upper portion of the Quinault River is now protected in its present state in the Olympic National Park. The 1975 one-hundred year flood has created an unstable area above Quinault Lake which has changed the spawning and rearing habitats as well as the recreational fishing areas. Some areas around Quinault Lake and in the Quinault Indian Reservation have been heavily logged, causing considerable damage to spawning areas for anadromous fish in the river and its tributaries.

Steelhead are reared on the Quinault reservation at both the USFWS Quinault National Fish Hatchery and at the tribal fish hatchery. Returns have been excellent and considerable spawning of wild fish occurs in the river below Lake Quinault. The Quinault Tribal steelhead plants have ranged from 133,000 to 400,000 smolts a year. The Service also releases smolts into reservation waters, as shown below:

STEELHEAD PLANTS FROM FACILITIES ON THE QUINAULT RESERVATION

YEAR	USFWS	TRIBE
76		341,400 smolts
77	49,500 smolts	236,000 smolts
78	78,300 smolts	133,000 smolts
79	268,000 smolts	346,000 smolts
70	198,700 smolts	290,000 smolts
81	202,300 smolts	290,000 smolts
	984,900 fry	600,000 fry

The Quinault Tribe fishes both the Quinault and Queets river systems. The historical catch data for these rivers are compiled in Table 5.

TABLE 5

Historical Catches by Indian and Recreational Fisheries on the Quinault and Queets River Systems

Quinault River

Year	Reported Indian Harvest	Punch Card Sport Harvest	Combined Total
1940-41	4,157		
43-44	15		
44-45			
45-46	157		
46-47	6,246		
47-48	2,325	402	2727
48-49	5,092	630	5722
49-50	2,097	419	2516
50-51	8,565	935	9500
51-52	8,712	709	9421
52-53	3,262	828	4090
53-54	5,127	1,545	6672
54-55	2,314	905	3219
55-56	1,698	1,104	2802
56-57	2,616	555	3171
57-58	2,758	1,112	3870
58-59	2,971	459	3430
59-60	2,767	647	3414
60-61	3,384	791	4175
61-62	3,856	483	4339
62-63	5,523	846	6369
63-64	3,227	944	4171
(average)	3660	665	4506
64-65	-	656	-
65-66	-	865	-
66-67	-	778	-
67-68	2,228	903	3131
68-69	1,426	1,024	2450
69-70	1,304	670	1974
70-71	3,071	1,081	4152
71-72	-	826	-
72-73	4,216	471	4687
73-74	4,082	390	4472
74-75	4,356	269	4625
75-76	3,709	148	3857
76-77	3,345	169	3514
77-78	8,529	120	8649
78-79	4,362	135	4497
79-80	4,270	160	4430
(average)	4985	176	5161

QUEETS SYSTEM

YEAR	INDIAN HARVEST	QUEETS	CLEARWATER	SUB-TOTAL	COMBINED TOTAL
1943-44	2365	-	-	-	-
1944-45	3423	-	-	-	-
1945-46	2450	-	-	-	-
1946-47	3427	-	-	-	-
1947-48	3052	213	39	252	1304
1948-49	4804	867	21	888	5692
1949-50	4365	184	31	215	4580
1950-51	4492	132	175	307	4799
1951-52	4229	1,505	314	1,819	6048
1952-53	5224	556	235	791	6015
1953-54	13182	1,046	293	1,339	14571
1954-55	4427	1,040	220	1,260	5687
1955-56	2554	604	84	688	3242
1956-57	3896	280	131	411	4307
1957-58	2822	535	91	626	3488
1958-59	3184	397	107	504	3688
1959-60	2512	454	221	675	3187
1960-61	3081	364	131	495	3576
1961-62	1168	446	114	560	3728
1962-63	5473	252	132	384	5587
1963-64	3774	784	335	1,119	4892
Avg.	4090			725	5094
1964-65	-	781	160	941	4892
1965-66	-	716	219	935	-
1966-67	-	562	183	745	-
1967-68	-	634	196	830	-
1968-69	-	558	103	661	-
1969-70	-	443	138	581	-
1970-71	-	484	191	675	-
1971-72	10,470	453	150	603	11073
1972-73	7049	372	44	416	7465
1973-74	6899	226	32	258	7157
1974-75	6019	303	69	372	6391
1975-76	4384	67	12	79	4463
1976-77	2353	53	43	96	2449
1977-78	3621	232	57	289	3910

Information on steelhead run sizes has improved since the 1974 Boldt decision, but is not nearly as complete or reliable as salmon data. The Washington State Game Department and various treaty tribes determine a harvestable number of steelhead before each season based on a combination of expected hatchery returns native runs and historic Indian and sport landings. The total steelhead catch in the Boldt case area is about the same today as it was before 1974 (see Table 2). The sport catch in the case area has averaged 51% during this period.

Progress has occurred in determining steelhead spawning densities in a number of river systems. The accuracy of both tribal and sport catch reports has also significantly improved. Biological studies conducted by both the Washington Department of Game and several of the tribes have helped make management decisions more scientific.

Cuts in state and federal programs may seriously set back this progress. More information is needed on the status of the runs. Escapement goals need to be established for more effective management. The state and tribes need to agree on management and enhancement plans to assure that hatchery plants do not adversely impact native runs.

Let me now turn to the steelhead resources of the Columbia River Basin.

General

Commercial harvest of steelhead in the Columbia Basin, since 1975, has been limited to the Indian fishery which operates in about 130 miles of mainstream Columbia River between Bonneville and McNary Dams. Since 1976 an 8" minimum mesh regulation has been used to reduce the incidental commercial harvest of summer steelhead (in 1981 an Indian regulated fishery, under authority of the U.S. District Court, also included this mesh restriction). Since 1977, under the "Five Year Plan" commercial harvest of summer steelhead has been incidental to the commercial harvest of fall chinook salmon, as the Tribes as part of the "Plan" agree to not target on steelhead. Since entering the agreement the tribal commercial harvest of steelhead has dropped from a high of 31,700 in 1977 to 4,800 in 1980.

Total non-commercial harvest of summer steelhead in the Columbia Basin could not be obtained for the same period; however, for the 10-year period 1969-1978, basin wide sport catch averaged 69,900 summer steelhead with 38,300 being harvested in the mainstem Columbia River or tributaries above Bonneville Dam in Washington, Oregon and Idaho.

An Indian commercial fishery during a "winter season" harvests low numbers of steelhead. These are not considered significant contributers to the resource since they are mainly spawned out or hold-over fish from the previous summer run.

With regard to the Columbia Basin, at least 63 hatcheries and 18 rearing ponds have released over 2 billion anadromous fish between 1960 and 1976. Over 95 million of them have been steelhead. The Washington portion of the Basin has received over 40 million, the Orgeon portion has received nearly 21 million, and the Idaho portion has received over 34 million. Current production figures are being compiled and will be submitted for the record.

WARM SPRINGS INDIAN RESERVATION

Harvest

The steelhead resource of the Warm Springs Reservation contributes to the Deschutes River steelhead run. Both a sport fishery and an Indian subsistence fishery operate on the Deschutes River.

Oregon Department of Fish and Wildlife estimated the harvest in both of these fisheries for the period 1971-1979. The following summarizes the harvest of steelhead in the Deschutes River for that period:

	Subsistence	Sport
1971	1,161	13,266
1972	No data	14,559
1973	1,314	8,800
1974	2,606	10,415
1975	898	7,396
1976	452	10,307
1977	2,177	9,663
1978	953	2,154
1979	1,082	3,364

Status of Run

The steelhead resource on the Reservation is limited compared to the total Deschutes River system.

Steelhead counts in the Warm Springs River were first obtained in 1977 when counts were made at the Warm Springs National Fish Hatchery. The following summarizes the counts:

1977 - 136
1978 - 417
1979 - 381
1980 - 354
1981 - 397

Environmental Status

The major steelhead production areas on the Reservation are in the upper watershed of the Warm Springs River and Shitike Creek. In general the entire watershed is in a pristine or semi-pristine condition. Major uses of the watershed are for logging and grazing. The Tribe monitors and/or controls activities which could impact or degrade the fishery habitat.

Efforts for Restoration and/or Protection of the Reservation's Steelhead Resource

(1) The Tribe has closed all Reservation-Tribal and non-Indian fishing for steelhead within the Reservation boundaries to protect spawning stocks.

(2) The Tribe eliminated all recreational use of the lower Warm Springs River to prevent water quality degradation.

(3) The Tribe, cooperatively with Oregon Department of Fish and Wildlife, is eliminating physical barriers to upstream movement of anadromous fish, thus making additional spawning and rearing areas available. Notable examples are elimination of a natural barrier on Mill Creek (tributary to Warm Springs River), periodic control and removal of beaver dams, and planned removal of a domestic water supply dam on Shitike Creek, once a new water supply is developed.

(4) With cooperation of the Fish and Wildlife Service the Tribe is introducing steelhead fry (from the Reservation) into upper areas of Shitike Creek to increase steelhead runs.

(5) With assistance from the Fish and Wildlife Service the Tribe determined the potential steelhead habitat in Warm Springs River and Shitike Creek in order to optimize steelhead resource.

Yakima Indian Reservation

Harvest

A portion of the Yakima River forms the eastern boundary of the Reservation and supports both an Indian subsistence fishery and a recreational fishery. The Indian subsistence fishery is targeted on spring chinook salmon, and only an occasional steelhead is taken. The following is a breakdown of the sport harvest within the system:

1975 - 944
1976 - 457
1977 - 488
1978 - 112
1979 - 193
1980 - 125

Status of the Run

During the pre-1890's, the steelhead run was estimated to be about 87,500 with the total anadromous resource approaching 515,000 fish. In 1980, total anadromous run entering the river system was estimated at about 2,000 fish.

Environmental Status

The Yakima River Basin has undergone tremendous environmental change with the major force being agriculture. Steelhead habitat degradation has resulted from:

(1) reduction of instream flows which has reduced or destroyed spawning, rearing and migration habitat;

(2) the construction of diversion structures, and storage dams without passage facilities or with inadequate passage facilities which form complete barriers to migration or cause delays in migration;

(3) unscreened diversion canals or inadequately screened facilities which allow downstream migrants to be diverted into irrigation delivery systems or cause mortalities at the facility;

(4) degradation of water quality through water withdrawals in the upper system, and returns of large volumes of surface runoff with concentrations of suspended sediments, nutrients, and coliform bacteria in the lower reaches of the river.

Efforts for Restoration and/or Protection of the Resources

(1) The Yakima Tribe initiated the formation of a Yakima River Rehabilitation Committee whose goal is restoration of anadromous fish runs in Yakima River system. State, Federal and Indian groups actively involved in the Yakima River responded and are members of the committee.

(2) The Washington Department of Fisheries and the Yakima Tribe have proposed to work jointly to determine carrying capacity of rearing habitat for anadromous fish including steelhead.

(3) Through efforts of Bureau of Indian Affairs, Yakima Tribe, and Fish and Wildlife Service, the FWS is determining the production potential of steelhead in the Yakima system under various flow regimes.

(4) Washington Department of Fisheries has initiated a program to determine status of anadromous fish runs by traps at two dam sites in the Yakima system.

(5) Sportsmmen groups have been involved in steelhead rearing programs (cooperatively with Washington Department of Game) to release steelhead into the Yakima basin.

Umatilla Indian Reservation

Harvest

The Umatilla River, with some of its headwaters and much of its length within the Umatilla Indian Reservation, supports a sport fishery for steelhead. The Tribe relies on off-Reservation fishing sites to supply its subsistence needs which center largely on spring chinook.

Efforts for Restoration and/or Protection of the Reservation's Resource

(1) The Tribe has closed the Reservation to fishing for steelhead by non-Tribal members except for the three-mile stretch of river from the Reservation boundary to Mission Bridge to protect spawning stocks.

(2) The Umatilla Tribe along with ODFW and other Federal agencies have cooperated in developing a proposal to remove Three-Mile Dam on the Umatilla River and replace the water lost to the irrigators by building a gravity flow system for Columbia River water withdrawn upstream from McNary Dam. The diversion system would be part of the McNary Second-Powerhouse Project. The removal of Three-Mile Dam would greatly enhance the prospects for rebuilding the steelhead run and re-establishing the spring and fall chinook runs.

(3) Through the cooperative efforts of the Umatilla Tribe, Bureau of Indian Affairs, Columbia River Inter-Tribal Fish Commission, and Fish and Wildlife Service, the FWS conducted an instream flow study to determine the natural production potential for steelhead and other anadromous species in the Umatilla River under various flow regimes. As part of the study, optimum instream flows for anadromous species were developed.

(4) Through the cooperative efforts of the Umatilla Tribe, Bureau of Indian Affairs, Columbia River Inter-Tribal Fish Commission and Fish and Wildlife Service, the FWS conducted an anadromous fish production facility study on the Reservation. The purpose of the study was to identify potential sites for artificial rearing facilities. Two potential sites on the Reservation were identified, and the Umatilla Tribe is presently seeking funding to begin a pilot rearing program for steelhead.

NEZ PERCE INDIAN RESERVATION

Status of the Run

Historically, an estimated 16% of all summer steelhead entering the Columbia River passed through or spawned in the Nez Perce Indian Reservation, where total numbers are not known but populations were very large. Recent population numbers, summarized below, can be considered minimal because they reflect many years of habitat degradation.

Status of summer steelhead runs into the Clearwater River, Idaho (all fish pass through or spawn in the Nez Perce Reservation).

Average Annual Run	Wild Fish	Hatchery Fish	Total
1950's	11,200	0	11,200
1960's	24,800	0	24,800
1970's	4,700	8,700	13,400

It can be observed that wild steelhead are in a severe decline and runs survive as a result of hatchery releases.

Indian Fishing

Depending upon the year, Nez Perce tribal members make up one to 22 percent of the fishing effort on Clearwater River steelhead. Tribal members fish primarily with sport fishing tackle, although traditional tribal fishing occurs. In a typical year, where about 5,000 steelhead would be harvested, nontribal fishermen would creel from 3,900 to 4,900 fish, and tribal members from 1,100 to 100 steelhead. In low run years, nontribal fishermen have been restricted to catch-and-release only fisheries, and tribal subsistence catches have been curtailed.

Environment Status of the Watershed

The Clearwater River watershed is made up, to a large extent, by pristine wilderness streams that have excellent production capabilities. Dworshak Dam blocked a significant portion of available anadromous habitat. Within the Nez Perce Reservation, about 314 miles of potential anadromous habitat are degraded. Some streams have lost steelhead runs as the result of poor logging, agricultural, and road building practices, and channelization. Streams classified as excellent remain underutilized because of low numbers of spawning adults. Reservation streams presently have from several pair of spawners up to several hundred pairs, depending upon annual run, environmental conditions, and fishing.

The overall environmental status could be termed comparatively good; the primary factor inhibiting production has been smolt survival through downstream reservoirs and dams.

Tribal Restoration Efforts

The Nez Perce Tribe has passed a law and order code relating to fisheries that restricts tribal members to subsistance fishing only. On occasion they have closed salmon fishing to tribal members for conservation purposes but have not done so with steelhead trout.

The Tribe recently hired a full-time fishery biologist and have an active interest in fishery conservation matters. They are actively involved also in the Columbia River Inter-tribal Fish Commission. It is the Tribe's desire to improve reservation fisheries through the preparation of a reservation fishery management plan, instream flow studies and habitat improvement. The Tribe also requested and received a hatchery feasibillity study (FWS) regarding the development of an anadromous fish hatchery on the Reservation. They have also investigated the possibilities of rearing fish in cages, installing hatching boxes, identifying rearing pond sites, and stream/riparian rehabilitation. The Tribal Council also takes an active interest in potential environmental conflicts on Forest Service, BLM and State lands in the watershed.

Population and harvest estimates are drawn from Idaho Fish and Game and Idaho Cooperative Fishery Unit data.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you may have.

Mr. PARISOT. Senator, at this point I am prepared to summarize by water information in the full text.

Senator GORTON. You have many tables and the like. So we will simply include that in the record.

I note that one of the tables which you include in your testimony does include at least a summary, and it is entitled "Summary of Steelhead Landings from Five Selected Fisheries in the Boldt Case Area, 1974–1980."

It lists quite precisely the values which I asked Mr. Sampsel about. There is a low of $559,000 in 1974 and a high of $921,000 in 1977–78.

That is the commercial value of Indian-harvested steelhead in the *Boldt* case area, but it does not include the Columbia River.

Mr. SAMPSEL. If we want a total of that, it would be on the five selected rivers.

Senator GORTON. Are these not the principal commercial steelhead fisheries in the *Boldt* case area?

Mr. SAMPSEL. Yes.

Senator GORTON. I want to thank you both very much for your testimony.

Our next set of witnesses are from the Washington State Department of Game.

Welcome; you may proceed.

STATEMENT OF JACK D. AYERST, DIVISIONAL ADMINISTRATOR, FISHERIES MANAGEMENT DIVISION, WASHINGTON STATE DEPARTMENT OF GAME

Mr. AYERST. Thank you, Mr. Chairman.

I am the only one here from the Washington Department of Game, so I will present the testimony for the agency.

Senator GORTON. Please do.

Mr. AYERST. Mr. Chairman and members of the Senate Select Committee on Indian Affairs, my name is Jack D. Ayerst and I am the divisional administrator for the Washington State Department of Game.

I would like to thank you for the opportunity to be able to testify today before this committee.

On June 29 of this year, in Seattle, Wash., Frank R. Lockard, director of the Washington Department of Game, testified before this committee expressing the concerns and position of our agency regarding the status of steelhead trout stocks.

Today, I would like to expand on Director Lockard's testimony, and specifically I wish to address that portion of our previous testimony expressing our concern that wild steelhead populations are placed in jeopardy by commercialization.

Adequate resources of manpower and funding have not been able to collect sufficient information to allow for precise management of steelhead stocks. This makes it very difficult for the fisheries advisory board to resolve disputes between the tribes and the Washington Department of Game which equitably allocate and adequately protect the steelhead resource.

The imprecision in management combined with the extreme efficiency of the tribal net fisheries and the low number of steelhead place wild runs of steelhead in constant jeopardy of being overharvested.

Evidence which supports our concerns fall into four general categories: No. 1, Long-term catch trends of wild steelhead; No. 2, enforcement of commercial fishing regulations; No. 3, data collection; and, No. 4, management conflicts.

I turn now to the long-term catch trends for wild steelhead.

The effect of prolonged Indian gill netting on wild steelhead populations is illustrated by the sport catches on the Nooksack, Skokomish, and Quinault Rivers.

These rivers have Indian reservations near their mouths and significant tribal fisheries for steelhead have existed since at least the 1930's.

Tribal fisheries which occurred before implementation of the *Boldt* decision were, for the most part, unregulated, and reported catches are minimum estimates.

After the *Boldt* decision, reported catches are more reliable and the tribal fisheries have been regulated to a greater extent.

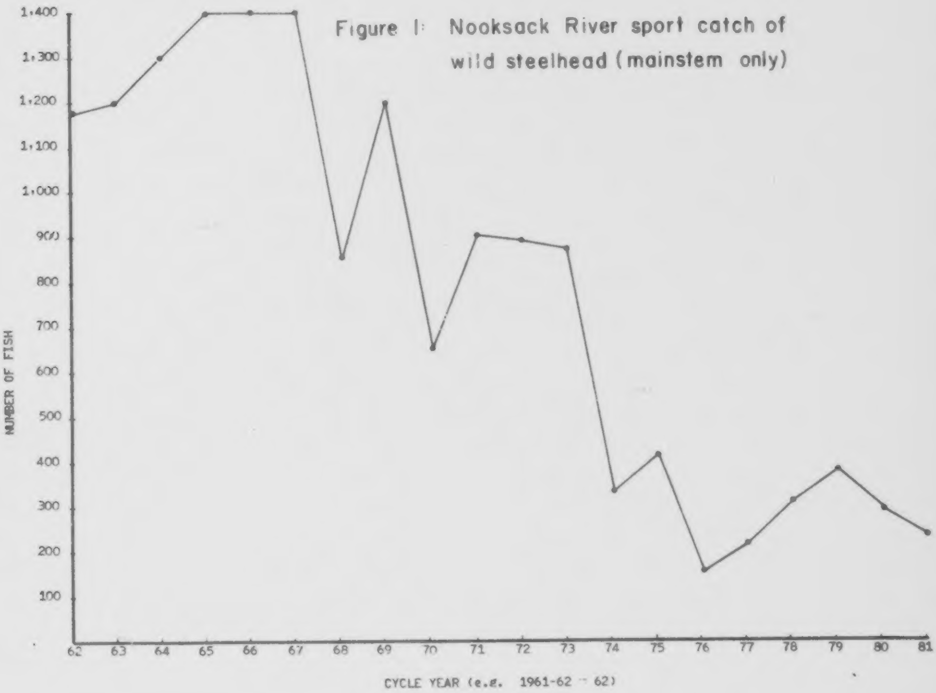
We believe the sport catches in these rivers reflect the status of their wild stocks and the impact Indian netting has had on them.

The sport catch of wild steelhead in the main stem of the Nooksack River has declined from a high of 1,400 fish in the mid-1960's to a low of 156 fish in 1976.

I refer here to figure 1 which I would ask be placed in the record at this point.

Senator GORTON. Without objection, so ordered.

[Figure 1 follows:]



Mr. **Ayerst**. The 1981 catch was 181 steelhead. The tribal catch has also decreased from 4,352 in 1975 to 781 in 1981.

These decreases were observed despite the fact that the Washington Department of Game initially stocked 20,000 steelhead smolts in 1962, and since 1972 has stocked from 20,000 to 58,000 annually.

The Skokomish River sport catch has dropped from a high of 1,183 fish in 1964 to 154 in 1981.

I refer here to figure 2 and would ask that this be placed in the record at this point.

Senator **Gorton**. Without objection, so ordered.

[Figure 2 follows:]

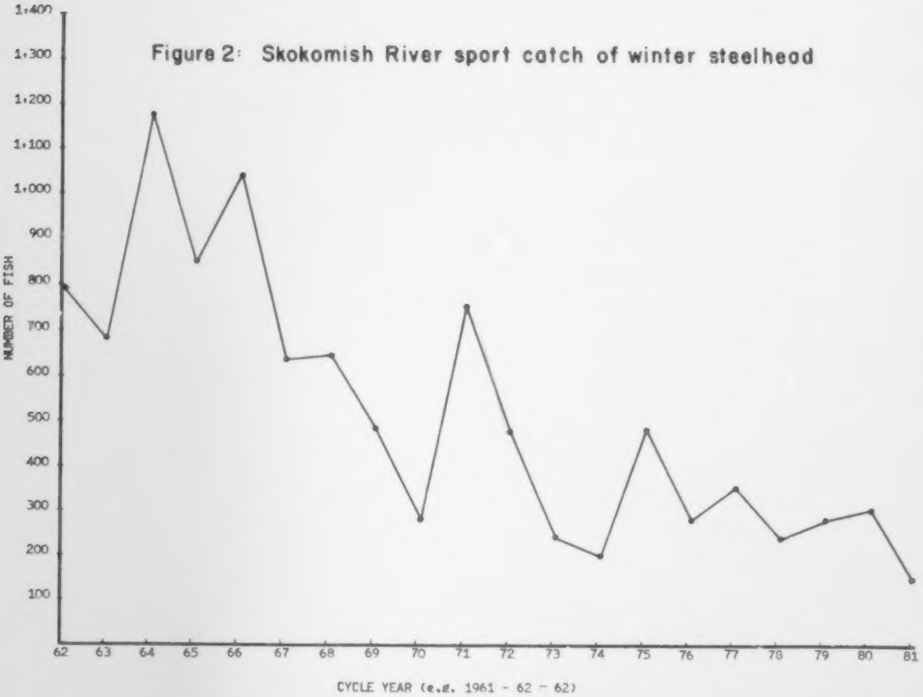


Figure 2: Skokomish River sport catch of winter steelhead

Mr. **Ayerst**. The tribal catch between 1975 and 1979 remained relatively constant; however, tribal catches during the 1980 and 1981 seasons did decline.

The sport catches have declined drastically even though the Washington State Department of Game has stocked approximately 20,000 smolts annually since 1960.

The sport catch of steelhead on the Upper Quinault River is particularly disturbing. Winter-run catches averaged 500 fish per year—for January through March—from 1962 until 1972.

Since then, they have decreased steadily and now hover around 100 steelhead.

I refer here to figure 3 and would ask that it be placed in the record at this point.

Senator **Gorton**. Without objection, so ordered.

[Figure 3 follows:]

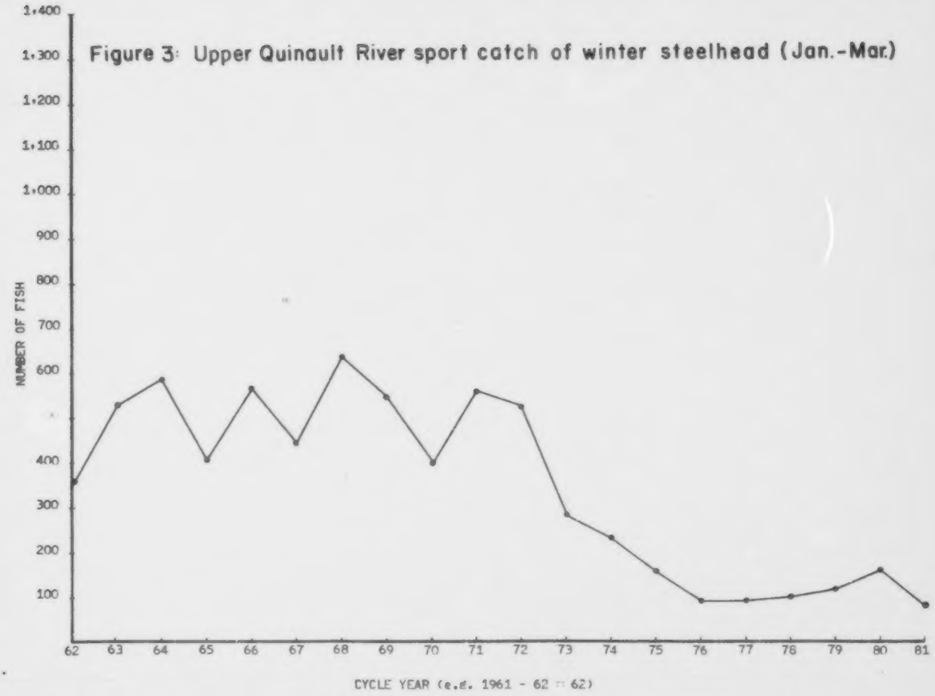


Figure 3: Upper Quinault River sport catch of winter steelhead (Jan.-Mar.)

Mr. Ayerst. The summer runs appears to have been fished close to extinction.

I refer here to figure 4 and would ask that it be placed in the record at this point.

Senator Gorton. Without objection, so ordered.

[Figure 4 follows:]

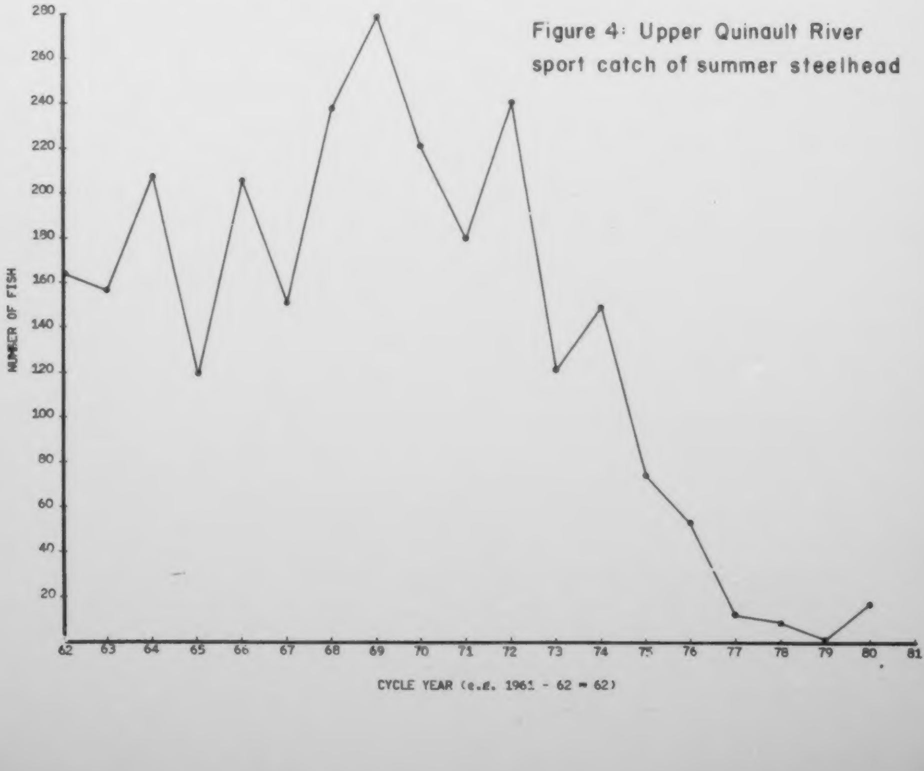


Figure 4: Upper Quinault River sport catch of summer steelhead

Mr. Ayerst. The annual harvest has dropped from approximately 200 fish in the 1960's and early 1970's to zero in 1979 and only 17 in 1980.

What is particularly alarming is that the Quinault Tribe has declared that the Quinault River will be managed for hatchery stocks and as such will be stocked with huge quantities of hatchery smolts and harvest rates will be maximized.

This management strategy, if allowed to continue, virtually assures the extinction of native steelhead stocks in the Quinault River.

I would like to move away from my testimony for a second here to explain the situation on the Quinault River. The lower Quinault River, approximately 40 miles of which lies totally on the Quinault Indian Reservation, and the upper Quinault River is that portion off of the reservation that flows into Lake Quinault.

From Lake Quinault it flows down to the mouth of the river where it empties into the Pacific Ocean; that portion lies all on the Quinault Indian Reservation.

So, the State has little or no control over the management of the fishery on the lower Quinault River or of the planning programs on that river.

But it is subject to what happens and as to what takes place there in regards the fishery in the upper river above Lake Quinault.

I turn now to the enforcement of commercial fishing regulations.

Because Judge Boldt ruled that the *Boldt* case area tribes can regulate their own fisheries, the Washington Department of Game has not been able to effectively enforce tribal fishing closures on reservations.

Steelhead runs are often left to the mercy of tribal enforcement. Illegal fishing chronically occurs on the Chehalis, Nisqually, Nooksack, Skokomish and Skagit Rivers.

Our Department has attempted to conduct joint enforcement patrols with tribal enforcement officers, but coordination with them has been difficult.

This past season the chairman of the Fisheries Advisory Board ruled that the Hoh Tribe had caught their fair share of steelhead—3,194—as of the first week in February and recommended that they cease fishing.

The tribe ignored the court adviser's ruling and continued fishing on reservation until the end of March, catching 547 steelhead over their allocation.

We could not enforce the ruling because we do not have authority on reservations and by the time legal action could be initiated in court, the steelhead season was over.

This is only one example of how the present management system fails to adequately respond to "in-season" management of steelhead.

Now for data collection. Commercialization of steelhead has created numerous problems regarding collecting all the necessary information to adequately manage the resource.

Sales of steelhead by tribal fishermen to private individuals—other than commercial fish buyers—are completely unregulated. We cannot require the fishermen to account for these fish and the tribes make no attempt to collect this information.

The tribes are required by the court to report steelhead kept by tribal members for ceremonial and subsistence purposes.

However, the 1974–75 season, only 56 percent of the ceremonial and subsistence catches have been reported and in 1979–80 only 35 percent of the tribes reported their catches for these purposes.

Senator GORTON. Let me interrupt. How do you know that so precisely? They are required to report and do not report. Then how do you know what is not reported?

Mr. AYERST. We have requested, from each of the tribes, their ceremonial and subsistence catches for each year.

In 1979 and 1980, 35 percent of the tribes that were required to make this report complied and sent us what those catches were, whether they were nothing or whether they were of some amount.

Senator GORTON. That is easy to determine from tribes which reported, but how do you know what percent of the catch was unreported? I am talking about as opposed to the percent of the tribes which did not make a report.

Mr. AYERST. The 56 percent relates to the number of tribes that did report.

Senator GORTON. That is also the number of tribes rather than the number of fish.

Mr. AYERST. Yes.

Senator GORTON. Excuse me for interrupting; please proceed.

Mr. AYERST. Many of the tribes do not collect information on total fishing effort—number of nets fished—expended by their fishermen. This data is invaluable in determining the overall efficiency of the tribal fisheries and for predictive purposes.

Other important management data that has been largely ignored by most tribes is collection of life history, such as scale collection and analysis, and sampling their catches for marks or tags.

I turn now to management conflicts.

Like all commercial fisheries, the tribal steelhead fisheries in Washington State have one objective which is to obtain maximum economic yield.

However, their objective appears to be maximum economic yield on a short-term basis because their philosophy is that spawning escapement goals should be set as low as possible and every fish in excess of that goal must be harvested.

If they are not harvested, the tribes consider them wasted; they ignore the fact that steelhead, unlike salmon, do not always die after spawning and that steelhead populations are so small that superdeposition of redds and overescapement are extremely unlikely.

Many of the tribes believe that maximum harvest must occur unless the State can prove that further fishing will reduce escapement levels below that required for perpetuation of the stock.

The tribes' commitment to maximum harvest has lead them to argue that if non-Indian anglers elect not to, or are unable to harvest their full share—and allow part of their share to escape to spawn—then to prevent "wastage" the tribes can harvest additional fish beyond their fair share, or take the recreational fishery share.

The tribal philosophy of harvest is in direct conflict with our management policies. We reject the concept of wastage in regards to steelhead and we believe that the court ruled that each side is entitled to its fair share—50 percent—of steelhead.

Each group can decide how it wishes to utilize it. If non-Indians choose not to harvest their share, or if they choose to catch and release their fish, so be it. It is their right to do so.

As previously mentioned, the manpower and resources have not been available to collect enough information to precisely manage the steelhead resource. Realizing this we initiated research programs to answer vital questions about the life history of wild steelhead and the effect of hatchery steelhead on wild fish. Preliminary results indicate that hatchery fish do not reproduce as successfully in the wild as native steelhead stocks.

In fact, it appears that their contribution to wild production may be insignificant. If this is true, then hatchery fish cannot be used to replace or rebuild wild runs.

In addition, our research suggests that wild steelhead populations may require up to 70 percent of the run to escape and spawn just to maintain their numbers.

Our research in these areas could have a profound effect on steelhead management and until the final results are in and until we have an adequate data base compiled by our management section, we opt for conservative harvest of wild steelhead.

We have emphasized harvest of hatchery fish, reduced the overall efficiency of the sport fishery on wild steelhead, and we have argued for spawning escapement goals that provide safety margins required by wild populations to insure they are not overharvested.

Our policies obviously do not mesh with tribal policies on harvest and the result is that many disputes on allocation and escapement goals are settled by the Fisheries Advisory Board.

The chairman of the Advisory Board must make his recommendations on the evidence presented to him. Quite often the available data is not adequate or is conflicting and he recommends a compromise position on allocation or escapement goals.

We believe this type of management is not adequate to protect the steelhead resource and a more conservative approach should be followed. Our hands are tied, however, because of the limitations placed on us by the *Boldt* decision.

Another area that is of concern to us is enhancement by the tribes of late returning—February-April—stocks of steelhead. These hatchery fish return at the same time as wild stocks and many tribes wish to harvest these fish at hatchery rates.

Wild runs of steelhead cannot perpetuate themselves when subjected to hatchery rates of harvest. The end result is a decline in wild fish and subsequent stocking of more hatchery fish to sustain the fishery.

We believe late stocks should only be enhanced to bolster the runs so they can more easily perpetuate themselves. The objective should not be to create another hatchery run.

In conclusion, as Director Lockard stated in his testimony, the catch of winter steelhead in the *Boldt* case area before and after the *Boldt* decision is approximately the same even though winter steelhead plants by the Washington Department of Game have increased by 46 percent.

The most likely cause for this decline is that wild runs are declining. I have documented the decline of steelhead populations on three rivers which have had prolonged Indian net fishing, and we believe that

Indian fishing since the *Boldt* decision is a major reason why returns have not kept pace with increased stocking.

Enforcement of tribal fisheries on reservations under the present management structure is confused and inadequate. The result is inequitable sharing generally in the tribes' favor and spawning escapement is compromised.

The inattention the tribes have given to collecting certain types of management data continues to hamper proper management.

Potentially the most destructive factor relating to commercialization of steelhead is the tribal philosophy of harvest.

Applying maximum harvest rates with low escapement goals to prevent "wastage" may be applicable to salmon management—where the numbers are great and they die after spawning—but to apply the same principle to steelhead is to completely ignore the basic facts concerning this fish.

Steelhead populations are small and they do not die after spawning. We believe that to insure the continued existence of significant populations of wild steelhead that intensive commercial fisheries must cease immediately.

This is why we support the Steelhead Trout Protection Act and urge your endorsement and support for its passage.

Thank you.

Senator GORTON. I have a couple of questions.

At the very beginning of your testimony you speak of the concept of the extreme efficiency of tribal net fisheries. What does "efficiency" mean in this context?

Mr. AYERST. Efficiency as related to the type of gear that is used in the fishery and also the location of where the fishery occurs.

On many of the streams where the fishery occurs, the steelhead fishery is located at the mouth of the river where all the fish entering that system must pass. The gear that is used is gill nets and they are extremely efficient in harvesting fish over a short period of time and the manner in which the fishery occurs can take a substantial portion of the total run.

In fact, some research conducted in Canada years ago indicated that they could be as high as 99 percent efficient.

Senator GORTON. Efficiency means that anybody's net fishery can catch a much greater percentage of the run than can a group of individuals fishing with hook and line?

Mr. AYERST. That is correct. The hook and line fishery, by contrast, is a much less efficient fishery and requires a substantial amount more effort to catch the same number of fish.

Senator GORTON. In the *Boldt* case area, what percentage of the anadromous fish, salmon, and steelhead combined does steelhead constitute?

Mr. AYERST. 3.6 percent of the total catch is made up of steelhead. I can give you the exact numbers if you would like.

Senator GORTON. Please submit those or if you have a table, that would be fine. We will let you submit that in more detail.

Mr. AYERST. I believe you will find that on page 7 of Director Lockard's testimony which was presented at the hearing in Seattle. Those figures are 53,700 steelhead and 1,422,700 salmon in the *Boldt* case area for the period between 1976 and 1980, which is the period encompassed there.

Senator GORTON. Your statement emphasizes very heavily the wild runs of steelhead as opposed to the hatchery runs.

Why do you distinguish significantly between those two? Is there a difference between wild steelhead and hatchery steelhead? If so, what is it?

Mr. AYERST. Basically the wild steelhead are those steelhead that cost the citizens no additional funds to produce. The streams by our philosophy should be seeded with enough fish to fully seed their carrying and rearing capacity for a particular species of fish.

So those fish are free to us and can make up substantial numbers of the total population.

Senator GORTON. Is there a physical difference in the fish? Are they different size?

Mr. AYERST. Basically they essentially are the same except that in some instances some of the wild stocks of fish are rather unique because of size and because of the time of year in which they return.

In some cases the wild strains of steelhead are larger than those produced in hatcheries for several reasons. The hatchery fish are produced more rapidly, spending only 1 year in the rearing program as opposed to 2 or 3 years in the wild to reach what we call a smolt size. The smolt size is that size fish which goes out to the ocean.

They stay out in the ocean for a period of time before returning. The wild stocks tend to stay out in the ocean perhaps 1 year more or 1 year longer than most of the hatchery stocks. Thus, many come back as larger fish.

Senator GORTON. Why does your Department consider wild run steelhead to be more desirable than hatchery run steelhead other than simply for cost?

Mr. AYERST. Basically the cost is the primary reason, although our management philosophy is that we shall manage the streams to produce to the fullest capability and supplement the wild stocks with hatchery programs.

This makes commonsense so far as the management of the fish is concerned.

The wild fish originally made up most of the stocks that were returning. As the demand for steelhead increases, the numbers of wild fish decreased and we were forced to go to an enhancement program, utilizing the hatcheries.

So, we would like to continue to maintain as high a level of wild stocks as possible.

Senator GORTON. When you mix hatchery stocks and wild stocks, I gather you are saying that when you harvest on the basis of the hatchery stock, the wild stock suffer, but why is that?

Do they reproduce less efficiently or what?

Mr. AYERST. Basically intensive commercial fishery can take the large share of hatchery fish automatically. This will overharvest the wild fish that are mixed in with the hatchery fish.

In other words, if you have 90 hatchery fish coming in and 10 wild fish, the odds of those 10 wild fish will be harvested while trying to harvest the 90 hatchery fish is very high.

Senator GORTON. Thank you.

We will now proceed to the Northwest Indian Fish Commission and its testimony will be divided into three sections. The first will be presented by Mr. Frank.

Please introduce the other members with you, Mr. Frank.

STATEMENT OF BILL FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION, ACCOMPANIED BY LORRAINE LOOMIS, COMMISSIONER, POINT ELLIOTT, AND GARY PETERSON, COMMISSIONER, POINT NO POINT

Mr. Frank. Thank you, Mr. Chairman.

I wanted the Northwest Indian Fisheries Commission to be present here in case you want to ask them some questions.

I have with me the executive director of the Northwest Indian Fisheries Commission.

On my left I have Lorraine Loomis, commissioner for Point Elliott. Next is Guy McMinds, commissioner for Quinault tribal area along the coast; and on my right I have Gary Peterson, commissioner for Point No Point.

We have one that is not here at present and that is the Makah treaty area. His name is Dale Johnson.

With that, I have the executive director of the Northwest Indian Fisheries Commission, Jim Heckman.

You have my statement. I will read a little bit of it, but not the whole thing.

I am Bill Frank, Jr., chairman of the Northwest Indian Fisheries Commission, speaking for the commission and its 20 member tribes on Puget Sound and the Washington coast.

Other commissioners and tribal representatives will provide detail on concerns specific to their treaty areas, and are available to answer questions the chairman and other committee members may have regarding our testimony.

The commission is authorized by its member tribes to represent and coordinate their fisheries management policies. The commission functions as the tribes' voice in meetings before State, regional, Federal, and international agencies and organizations on fisheries matters.

Mr. Chairman, we are here today as we have been every time those few Washington State government officials, Federal legislators, and non-Indian fishing organizations have allied with each other in attempting to abrogate the treaties by overturning the 1974 *U.S.* v. *Washington* ruling by Federal Judge George Boldt. For 7 years there have been appeals by the State, even after the U.S. Supreme Court upheld the district court's decision in 1979.

A series of attempts to erode the ruling piecemeal have appeared recently. In one instance, Federal Judge Walter Craig has ruled that the 1974 case prescribes fisheries management on a river by-river, run-by-run basis.

Prior to Judge Craig's ruling, the State promoted management and allocation in the ocean fisheries by aggregation, which offers little or no protection for depressed salmon runs on selected coastal river systems, and does not meet the treaty-entitled allocation of 50 percent to the tribes.

Charges against Makah Indians fishing during a tribally sanctioned fishery were dismissed when Judge Craig found that the State had acted contrary to the treaty between the tribe and the United States. Judge Craig also ruled that the State had violated terms of U.S. district and Supreme Court rulings.

Your bill, Mr. Chairman, is another attempt to abrogate the treaties between the United States and tribal governments. The treaties, as specified under article VI of the U.S. Constitution, are the supreme law of the land.

No distinctions were made in the treaties for separating salmon from steelhead in the tribes' exercise of reserved fishing rights.

As we stated in our June 29 testimony in Seattle, the attempts to legislate away the tribes' reserved fishing right to steelhead have through the years been consistently rejected by Congress.

Prior administrations and Congressmen have seen through such attempts to unilaterally abrogate the treaties and have refused to allow the undermining of these formal agreements protected by the U.S. Constitution.

Your bill not only erodes the treaties but also threatens to obstruct the substantial progress already made by tribal, State, and Federal governments needed for harmonious fisheries management and required by the 1980 Salmon and Steelhead Conservation and Enhancement Act.

The momentum created and the atmosphere of cooperation between fisheries managers in the Northwest inspired by the Act will be seriously and senselessly harmed by your action.

The bill's attempt to exclude steelhead from a joint comprehensive management and enhancement plan, giving this one species special consideration, could altogether derail the valuable work the act has set in motion.

The commission and our member tribes do not understand the vindictiveness you are exhibiting in attempting to prevent the tribes from pursuing their treaty-guaranteed harvest of steelhead.

For some tribes, steelhead serve as the "bread and butter" salmon, the main source of income. For all tribes, steelhead and salmon are essential in sustaining the cultural and traditional life of the Pacific Northwest Indians.

This bill is called a conservation measure; but without continued participation of the tribes in managing steelhead, there will be no conservation. The tribes justly deserve recognition for their careful and deliberate management of steelhead and salmon in accordance with the biological needs of the resource.

Steelhead management today has benefited measurably from the tribes' work in research, enhancement, and in protection of the spawning habitat.

The tribes have, in the past 5 years, reared and released more than 1,685,000 steelhead. Tribal hatchery steelhead production has risen to more than 300,000 annually. Projections for 1983 indicate that the tribes will release 2.5 million steelhead, which will contribute to both treaty and sports fisheries.

Further, the tribes are active in the collection and preservation of brood stock native to western Washington river systems; a program considered by many to be far superior to that of the State's which provides only a boom and bust fishery for sportsmen.

Information vital to predicting future steelhead returns and evaluating needed enhancement and habitat restoration work is being obtained and provided by the tribes. This work includes surveys to assess spawning escapement needed to determine total run size and to evaluate the success of management programs.

Other projects include research on juvenile steelhead, which provides information on timing of outmigration, abundance, habitat, requirements, and freshwater survival.

Precise and effective management has resulted from the tribes' collection of catch data. Figures from the sports harvest alone cannot provide timely or reliable data on which to manage.

The tribes have consistently sought the kind of environmental and resource management that will guarantee the survival and enhancement of steelhead resources for all fishermen.

The treaties provide a unique remedy at law for insuring protection of the fisheries habitat. Through State and Federal Governments' treaty obligation, as reiterated by the court in phase II of *U.S.* v. *Washington*, to refrain from permitting or participating in activities potentially destructive to the habitat, the resource can be protected.

It has been argued by proponents of your bill that Federal moneys would be better spent solely for State steelhead enhancement projects, instead of tribal management programs. They are obviously unaware that it was not until treaty management was reaffirmed in 1974 that only then were significant steps taken to finally manage steelhead.

Your legislation itself is an irresponsible use of taxpayers' dollars in many ways: The cost of these hearings not only to the tribes, but also to State and Federal officials here today; the proposal to have the tribes file damages with the Court of Claims, insuring years of costly litigation; and the expense of lost time, time sorely needed to manage the salmon and steelhead resource.

I have said many times that the salmon and steelhead cannot survive another round of court actions nor legislative hearings, and I hold steadfast to my claim. Your attempt to use steelhead as a political rallying point to shamelessly obtain non-Indian sports fishermen's votes will serve to the detriment of the resource as well as the Indian culture.

If tribes are prohibited from the commercial harvest of steelhead, the loss will not only be monetary but will also affect other factors: employment; the upset of tribal enterprise; the usurping of tribal self-determination; and the disruption of the cultural value of fish and fishing to maintaining tribal identity and lifestyle.

The impact of your bill, Senator Gorton, goes beyond the decommercialization of steelhead, which is itself an unlawful taking of a property right for private rather than public use. It would also give States regulatory powers on reservation, unconstitutionally intruding on the tribes' right to self-determination, which the present administration has publicly supported.

Your bill holds out false hope to those handful of sports fishermen leaders who, like you, are unwilling to acknowledge the advantages of tribal participation in steelhead mangement, and who fail to recognize the constitutional protection of treaty-reserved fishing rights.

Your proposal to remove the tribes from steelhead fishing and management and to force State regulation in onreservation waters will reopen the gap between Indian and non-Indian fishermen and managers.

We have covered this ground before. What else can I say? Most of the players here today are the same, and the rhetoric has not changed. What we all must consider is the survival of the steelhead resource and of all people who depend on that fishery. The Congress, I believe, recognizes its obligation to uphold the U.S. Constitution and the treaties it protects.

We hope that today will be the last time the tribes will have to argue for rights long ago reserved to them in the treaties. We hope that this is the last time for the sake of the resource. Let us leave a proud record showing that the United States kept its word with the Indian people of the Pacific Northwest. Let us leave fish for both the Indian and non-Indian generations to come.

Senator Gorton, let the Indian and non-Indian resource managers work together on enhancing and regulating steelhead fisheries.

As we continue down the road trying to manage the Northwest fishery in our State of Washington and in the Northwest, and trying to protect the life of that salmon, whether it be steelhead or the other five species of anadromous fish, we seem to continually get into disagreements on how the management should be concerned or how the 50 percent should be divided up.

I think it is very clear that the court has laid down the ground rules. We have a lot of rules, through some of our salmon management plans that we have implemented, now in the Northwest between the State of Washington and the Indian tribes.

Certainly the tribes of the Northwest have exhausted all the remedies that we have. We will continue to be available to the U.S. Senate for any of the hearings or questions that they have to ask us.

Thank you.

Senator GORTON. Thank you.

Does anyone in the group wish to make an additional statement? Mr. McMinds?

STATEMENT OF GUY R. McMINDS, COMMISSIONER, QUINAULT TREATY AREA

Mr. McMINDS. Thank you, Mr. Chairman.

I am commissioner from the Quinault treaty area.

It was interesting to me to note that the game department now is trying to manage their fishery for the wild stocks. We had a very difficult time to persuade the game department that wild stocks needed to be considered.

In fact, their management system has been around one stock of hatchery fish in the south Tacoma hatchery. They distributed that throughout the State. What you will find in testimony we are going to give to the committee here is that that stock of fish in many cases has had deleterious effects upon the wild stocks, and in particular on the Skagit River.

I want to emphasize that this commission here sitting before you is a coordinating body of the five treaty areas. Each one of the representatives that you see here represents the tribal governments in each one of those tribal areas and each one of the commissioners acts through those tribal governments.

The commision and its member tribes are committed to one ideal and that is conservation. In testimony on the other side of the Congress last week, I testified strongly for the preservation of the fish runs on a run-by-run, river-by-river basis and for this philosophy to be included in the ocean fisheries management, and that there be legislative protection for wild runs.

It also may be significant for this committee to note that the process and procedures set under the *Boldt* case has as a primary objective that of protecting the conservation of the runs. And, the fisheries and advisory board is in charge of protecting the conservation of each one of these runs.

After the conservation is protected through a process of submitting biological information under a time schedule system to a court, the next thing that is done is that a harvestable number is made and that harvestable number is divided in half and each side has the opportunity assured to it to catch half of the run.

In cases that were mentioned by the game department witness earlier, they chose not to exercise that opportunity on certain of those streams.

Thus, they have forgone the opportunity to fish. In fact, they concentrated their efforts on other streams.

There is a mass switch of effort in the *Boldt* case area now to an artificially enhanced run. There is the Cowlitz River. Much of the sports effort is being transferred to that area.

On the Olympic Peninsula much of the sports effort is transferred to another artificially enhanced run on the Olympic Peninsula, the Quillayute River.

So, what is going on is the sportsmen are transferring their effort to other areas, and they are not taking their opportunity on certain other areas. In fact, we can show that spawning escapements to the areas in question and, in particular, on the Quinault and Queets have been unusually high because of the lack of accepting the effort opportunity available to the sports people.

Our first policy position then, as a commission, is that we accept the legal principles put down by the U.S. Supreme Court of sharing the runs on the basis of the 50–50 allocation.

We provide the opportunity to the sports people to catch those particular fish.

I want to emphasize that oftentimes this is on a case-by-case basis because there are particular legal problems associated with on and off reservation catch which have been resolved by the U.S. district court in our area.

The second policy point that I want to emphasize is that the tribes in our area do not think that the existing direction that the Washington Department of Game and its special interest constituency are taking is going to preserve the steelhead if they persist in attaching an economic value to that fish or a sports fish value.

Then somebody will come along who wants to generate hydropower from a river system or wants to do something else from that system and will demonstrate that there is a higher economic value than for those fish.

So, we think it is a faulty position. In fact, I would like to read to you from the record of the last hearing that was held in Seattle on June 29.

This happens to be the Clark County Fly Fishermen Association's testimony.

> Sportsmen must begin to reexamine the Indian issue from the standpoint of reality rather than emotion. The Indians have proven themselves as a powerful national political power who have consistently fought for the correct conservation issues to directly protect adult steelhead, downstream smolts, and juvenile rearing habitat.

That is what Phase II was all about. I know that you were deeply involved in the Phase II issue.

> Few Northwest rivers still maintain real strong runs of wild spawning steelhead. It is no accident that a strong proportion of these happen to be on rivers that have Indian reservations who use, protect, and in some instances, even enhance these wild populations; rivers such as the Quinault, Queets, Hoh, Deschutes, and Klickitat being among them. Unless Indians can continue to catch these steelhead commercially, there will be no reason for them to protect the steelhead habitat; no reason for enhancement projects such as that on the Quinault River where steelhead are selected and reared in the best managed quality steelhead hatchery program south of the Canadian border; a management that fills the Quinault's commercial needs and provides for excellent adult escapement for anglers and wild spawning.

Finally, the witness urges the committee in this following context:

> I urge you all to look at the Indians as an ally towards the preservation of steelhead despite spiritual, philosophical, and economic differences concerning the manner in which the steelhead are harvested. The Indian and the sportsman are user groups taking approximately equal numbers of steelhead. Beyond that are giant corporate and political forces that are systematically destroying habitat and managing water flows in direct conflict with fish production. If we as sportsmen choose to arrogantly fight that battle alone, the conclusion is inevitable--anadromous runs on the Columbia River will simply cease to be. Wild steelhead runs to many smaller river systems will be drastically compromised—perhaps eliminated.

That summarizes the precarious position that the Washington State Department of Game and its special interest constituency choose to take.

We, of course, on the Indian side of the fence want to preserve those wild runs. We want to preserve our opportunity to manage that fisheries resource.

That is our policy position in terms of our second point.

With respect to S. 874, our position is that it is not needed to manage the fisheries resources. The people out in the State, through the legislative process already established through the Salmon and Steelhead Act passed last year, have established the process that we choose to follow.

We have already appointed our people to participate in that process.

So far as the bill is concerned, there is no need for the bill to enhance the runs. There is no need for the bill to manage the run. If wild fish are to be managed then they must be managed on the basis of a legitimate concern for that resource and not as a ploy just to get the Indian people in a position to harvest less fish.

They must be managed on the basis of real concern to preserve those wild pools such as in the Quinault situation where we take wild fish over their entire life cycle and rear those fish in a natural environment in Lake Quinault and release those fish into the river.

Consequently, those fish come back to the rearing area and receiving streams adjacent to the reservation by naturally spawning in those streams.

I think that is an innovative program that the game department should well look at and try to put some of those types of programs into being at their own facilities.

Finally, the tribal management of the river systems on a run-by-run basis is a point of fact. We have fought to preserve that. We have not fought to preserve the South Tacoma Hatchery at Tacoma to distribute fish all over the State.

We fought to preserve specialized wild runs of fish in each one of the rivers.

I am reminded that the name of the hatchery is Chambers Creek Hatchery.

In addition, with the information that we are presenting today, such as the transcript that the committee has, you will find that the Indian tribal managers are real managers. That is our fifth policy position.

We are managers, and we are going to maintain our management integrity.

Our sixth position results from a distortion of the data and facts.

I have heard the chairman ask the game department what percentage of the steelhead run composes the entire catch in the State of Washington. The answer has been that it is 3.6 percent.

If you analyze the sports catch of the sportsmen in terms of the overall catch of all the salmonoid resources in the State, you would have to come down to the fact that the sports catch is about one-tenth of 1 percent of the entire harvest of the salmonoid resources.

Consequently, the sports harvest of the steelhead resources are minuscule compared with what its harvest of all the salmonoid resources is.

I am including rainbow trout, cutthroat trout, and anadromous cutthroat trout, and other like species of salmonoids.

So, it depends on how you want to play the statistical ball game. There has been a lot of distortion of statistics. If the committee is really interested in the facts, they will dig into some of the tribal testimonies, some of the testimonies of our biological experts.

They will find what has actually happened.

Thank you, Mr. Chairman, for this opportunity to give some kind of oral testimony here today.

Senator GORTON. Thank you.

Mr. Heckman?

STATEMENT OF JAMES L. HECKMAN, EXECUTIVE DIRECTOR, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. HECKMAN. Thank you, Mr. Chairman.

I am Jim Heckman. In preparing for this hearing today, I know the commission, as well as the tribes, contacted the Select Committee staff and your representatives on and off the staff.

We learned that what you wished to hear today was technical information regarding steelhead and the status of the run and the harvest and so forth.

I was quite saddened after having seen the preparation that tribes have gone through to prepare and present that data to have you not hear the technical testimony of the Fish and Wildlife Service.

In fact, the factual technical testimony of the Washington Department of Game was not presented.

So, for the remainder of the day all you have to hear from, at least from credible technical sources, are the tribes.

I hope that you will allow them to present the data on the runs.

I know that several of the tribes have their technical people here who can deal with that in great detail.

In several of the tribes' testimony, the technical data is available before you. In fact, I noticed in the Fish and Wildlife Service's testimony that it looks identical with ours.

I have provided you with a copy of our recent booklet from the Northwest Indian Fisheries Commission that includes several tables and charts to indicate to you a considerable degree the status of the stocks.

Senator GORTON. All the material will be included in the record at this point.

Without objection, so ordered.

[The material follows. Testimony resumes on p. 94.]

TREATY FISHING RIGHTS

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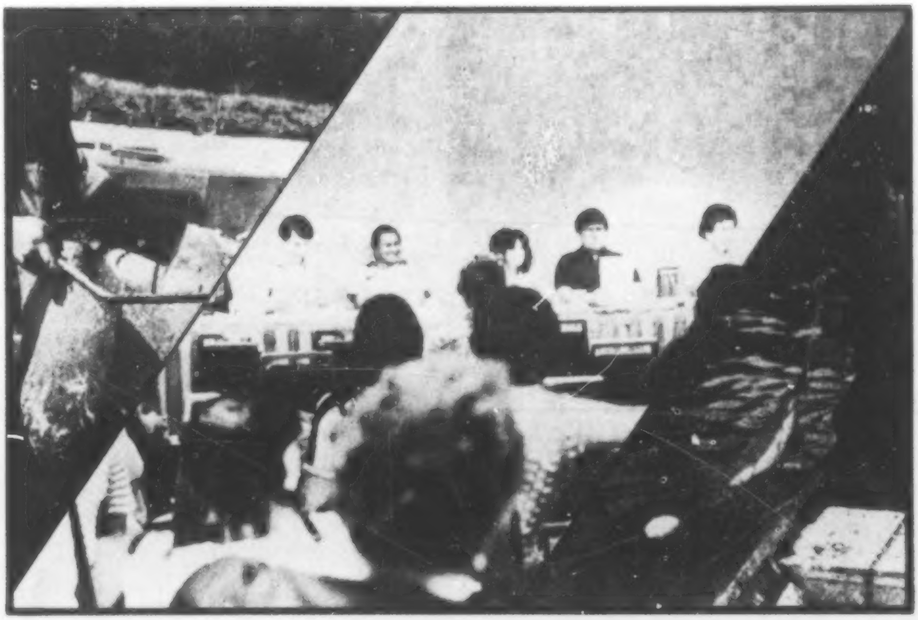
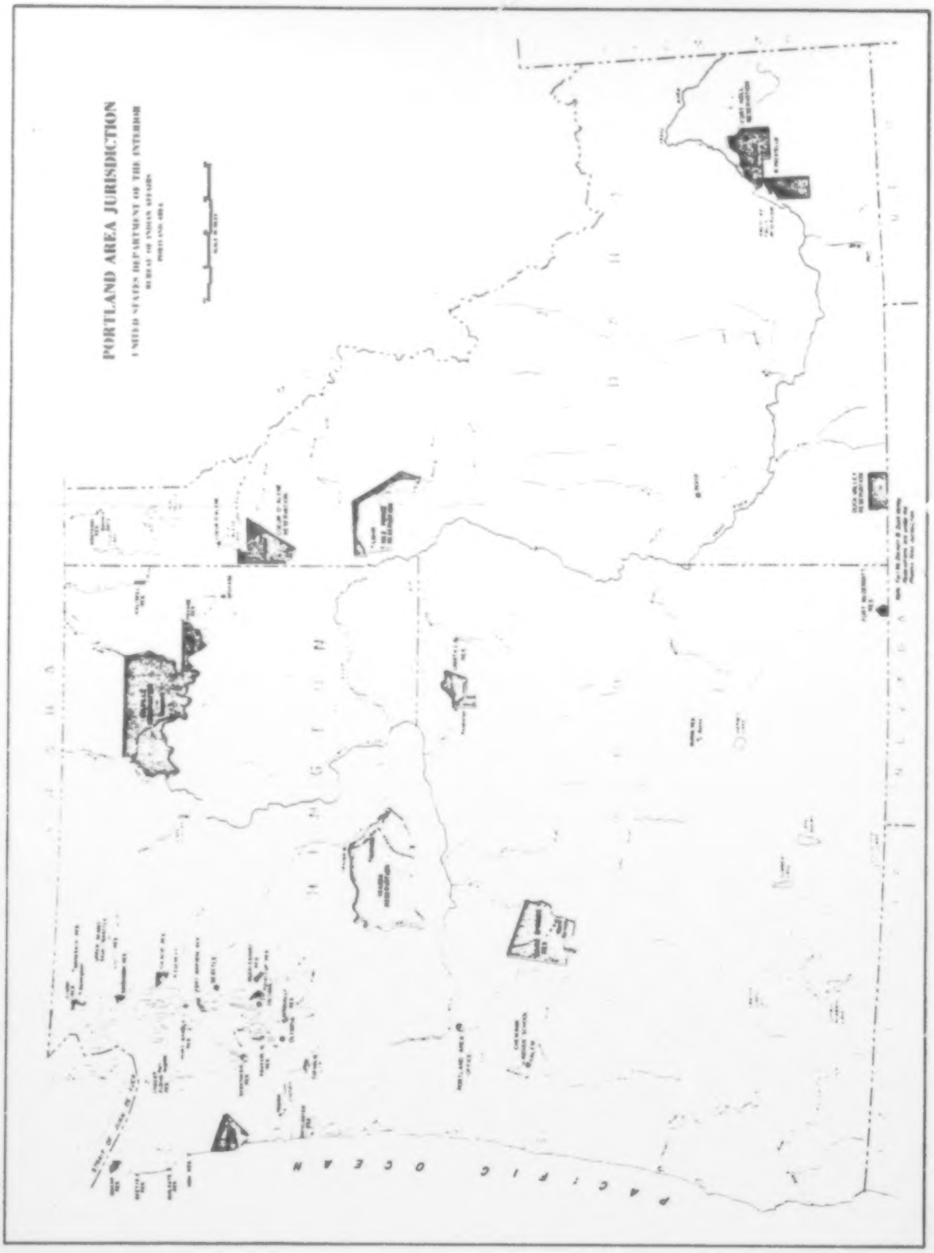


Northwest Indian Fisheries Commission


PORTLAND AREA JURISDICTION
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PORTLAND AREA
PACIFIC OCEAN
STRAIT OF JUAN DE FUCA
PORTLAND AREA OFFICE
FORT HALL RESERVATION
DUCK VALLEY RESERVATION

TREATY FISHING RIGHTS
and the
NORTHWEST INDIAN FISHERIES COMMISSION

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Introduction: The Northwest Indian Fisheries Commission

The Northwest Indian Fisheries Commission was organized in 1974 by the treaty Tribes of Western Washington to assist and coordinate the development of an orderly and biologically sound treaty fishery in the Northwest.

Individual Tribes in each of five treaty areas (see map, page 7) formed treaty councils, which selected representatives to the Commission. The Tribes charged the Commission with the responsibility of representing their unified interests in fishing issues before state, regional, federal and international fisheries management and regulatory organizations.

Since its inception, the Commission has worked toward the continued fulfillment of three specific goals sought by its member Tribes:

- To assist in the development of programs to protect and coordinate treaty fishing rights of member Tribes.
- To provide technical advice and coordination to tribal fisheries management programs as needed.
- To develop good will through public information and education projects, and to provide clear and accurate information on treaties and other Indian fishing matters to the Indian and non-Indian public.

Northwest Indian Fisheries Commission Chairman Dale Johnson comments on a fisheries bill before a panel of Congressional representatives. **Left to right:** Commissioner Lorraine Loomis, Point Elliott; Commissioner Bill Frank Jr., Medicine Creek; Johnson, Makah; Executive Director Jim Heckman; Commissioner Guy McMinds Jr., Quinault; Commissioner Gary Peterson, Point No Point.

The treaty Tribes of Western Washington party to the **U.S. v. Washington** case were signers of treaties with the U.S. during the mid-19th century. The five treaties, and the Tribes represented in each, are:

- **Treaty of Medicine Creek** (Dec. 26, 1854): Nisqually, Puyallup and Squaxin Island Tribes
- **Treaty of Neah Bay** (or Treaty of Makah) (Jan. 31, 1855): Makah Tribe
- **Treaty of Point Elliott** (Jan. 22, 1855): Lummi, Muckleshoot, Nooksack, Sauk-Suiattle, Stillaguamish, Suquamish, Swinomish, Tulalip and Upper Skagit Tribes
- **Treaty of Point No Point** (or Treaty of Mukilteo) (Jan. 26, 1855): Lower Elwha Klallam, Port Gamble Klallam and Skokomish Tribes
- **Treaty of Quinault** (or Treaty of Olympia) (Jan. 25, 1856): Hoh, Quileute and Quinault Tribes

The five **Commissioners** represent their respective treaty areas in meetings of fisheries management councils and organizations, to share information with legislators and their staffs, to negotiate management programs with State and Federal agencies, and to coordinate fisheries harvest, enhancement and enforcement activities.

The **Executive Director** implements the policies of the Commission and directs the activities of the Commission staff to provide information and support services to the Commission and member Tribes. The **Deputy Director** assists in the administration of the Commission offices and is the principal communication liaison link with the Commission's field staff. The **Assistant Director for Fishery Management Services** oversees fisheries management services and coordinates activities with the fisheries management staffs of the member Tribes. With a staff of three **Biologists**, he also coordinates management and catch reporting activities of the Tribes.

The Commission's public relations and press liaison operations are planned and supervised by the **Information and Education Coordinator** and **Assistant Coordinator**.

Clerical, fiscal and logistical support are provided by the **Executive Secretary**, two **Clerk-Typists** and the **Administrative Officer**.

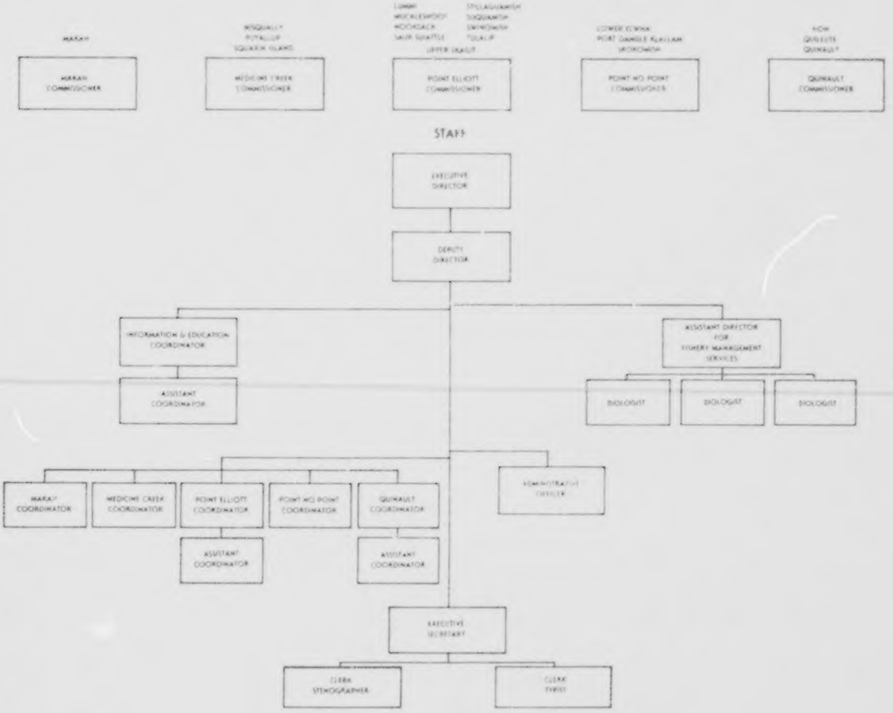
Each treaty area is served by a **Coordinator**, whose principal function is to ensure communication with the Tribes of that area. Coordinators are located as follows: **Makah** — Neah Bay; **Medicine Creek** — Olympia; **Point Elliott** — Everett; **Point No Point** — Kingston; **Quinault** — Taholah.

Services

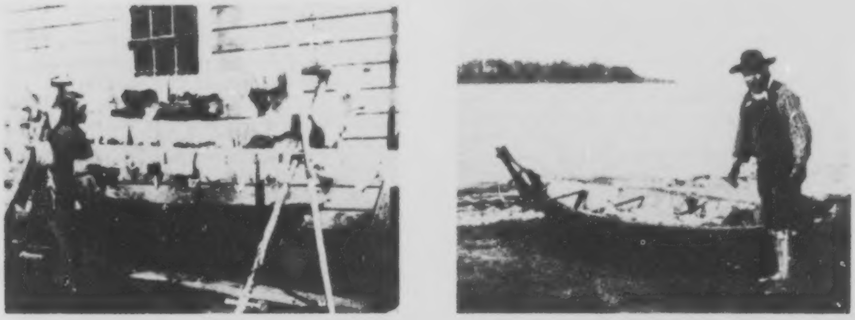
The many and varied services provided by the Commission to its member Tribes include:

- **Treaty rights protection.** By promoting greater understanding, the Commission works to create an atmosphere in which treaty rights are protected and exercised freely. Commission staff lend information, expertise, and technical assistance to attorneys engaged in trials and litigations affecting treaty fishing rights.

- **Representation of interests.** The Commissioners, the Executive Director and his staff represent the member Tribes in proceedings of fisheries management agencies and regional and international councils and commissions, including the International Pacific Salmon Fisheries Commission, the Pacific Marine Fisheries Commission, the Pacific Fishery Management Council and many others. Commissioners and Commission staff represent the member Tribes in discussions of management, enhancement and enforcement matters with the Washington Departments of Fisheries and Game, and with federal agencies such as the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. The Tribes are also represented by the Commission in fisheries negotiations between the U.S. and Canada, and in frequent information-sharing activities with other Indian, State and Federal organizations and agencies, with State legislators and members of the State's Congressional Delegation.
- **Policy-coordination.** Commission aids member Tribes in the development of fishery policies, and coordinates the policies of all member Tribes in a single united position.
- **Management services.** The Commission's technical staff provides expertise in development of tribal management and enhancement projects, and lends support to tribal harvest and management programs. The Fishery Management Services staff works with the State in the development and implementation of the Puget Sound Joint Salmon Management Plan, which seeks to protect and improve the resource and to provide a biologically sound fishery, guaranteeing protection of the member Tribes' treaty rights to harvest fish. Similarly, the Commission aids Pacific coastal Tribes in coordinating their management programs with the State.


MAKAH
NISQUALLY
PUYALLUP
SQUAXIN ISLAND
LUMMI
MUCKLESHOOT
NOOKSACK
SAUK-SUIATTLE
STILLAGUAMISH
SUQUAMISH
SWINOMISH
TULALIP
UPPER SKAGIT
LOWER ELWHA
PORT GAMBLE KLALLAM
SKOKOMISH
HOH
QUILEUTE
QUINAULT
MAKAH COMMISSIONER
MEDICINE CREEK COMMISSIONER
POINT ELLIOTT COMMISSIONER
POINT NO POINT COMMISSIONER
QUINAULT COMMISSIONER
STAFF
EXECUTIVE DIRECTOR
DEPUTY DIRECTOR
INFORMATION & EDUCATION COORDINATOR
ASSISTANT COORDINATOR
ASSISTANT DIRECTOR FOR FISHERY MANAGEMENT SERVICES
BIOLOGIST
BIOLOGIST
BIOLOGIST
MAKAH COORDINATOR
MEDICINE CREEK COORDINATOR
POINT ELLIOTT COORDINATOR
POINT NO POINT COORDINATOR
QUINAULT COORDINATOR
ADMINISTRATIVE OFFICER
ASSISTANT COORDINATOR
ASSISTANT COORDINATOR
EXECUTIVE SECRETARY
CLERK STENOGRAPHER
CLERK TYPIST

- **Data services.** Collation, storage and dissemination of tribal hatchery production and catch data provide treaty fishery management programs with a unified stock of information upon which to base management decisions. Catch monitoring, reporting and tabulation aid the Tribes in measuring their harvests against their potential and their guaranteed opportunity. Enrollment and identification of treaty fishermen provide for monitored harvest and controlled enforcement.
- **Communication services.** Speedy communication and coordination of State and Tribal regulations are crucial to the conduct of any fishery. The Commission has led discussions leading to the development of a single, unified electronic regulation notification and storage system now in operation. A hot line operated by the Commission's central office currently informs treaty fishermen of "in-common" fishing regulations throughout the salmon and steelhead seasons.
- **Public information and education services.** Commission staff members work to improve the image of the treaty fisherman, and to boost the quality and quantity of information available to the public on the subject of Indian fishing and tribal fisheries management programs. Aid is offered to the Tribes in the form of Commission assistance in press liaison. A public education program presents to the general public the united position of the Tribes on treaty fishing rights, and accurate information on tribal fishing methods and enhancement projects.



These pictures from the first decade of the 20th century depict tribal fishing activities among the Makahs of Neah Bay. **Left:** Woman hangs fish fillets for drying and smoking. **Right:** Fisherman brings in catch of halibut.

Indian Fishing: A Historical Survey

1848 Oregon Territory (including Washington) formed by Congress with provision that Indian lands and property should never be taken without Indian consent. Congress also protects all Indian rights to "person and property" so long as such rights remain "unextinguished" by treaties.

1853 Congress forms Washington Territory out of the Oregon Territory reserving to the United States solely the right to regulate Indian property, lands and other rights "by treaty, law or otherwise." Isaac Stevens, first Governor of Washington Territory, is directed to negotiate treaties with all Indian Tribes in the Washington Territory to extinguish Indian claims to land and provide for peaceful coexistence of Indians and non-Indians.

1855-1859 Treaty negotiations are completed. Indians give up claims to most of their land, retaining small reservations, but reserve rights to fish. Treaties contain provisions that Indians can fish at "all usual and accustomed grounds and stations. . .

in common with all citizens," thus agreeing that non-Indians can also fish.

1889 Washington admitted to statehood with the precondition that people of the State "forever disclaim" all right and title to Indian lands.

1860-1964 Perfection of the canning process leads to the development of a large commercial salmon fishery.

Spurred by growing commercial demand, the non-Indian fishery moves from single-stock locations into larger mixed-stock areas of the ocean and Puget Sound.

Impact of expanded fisheries reduces numbers of fish returning to Indians' fishing areas.

State criminal enforcement actions against Indians exercising treaty rights cause many tribal members to discontinue fishing in usual and accustomed places.

Some Indians fish in State commercial fisheries and along Pacific Coast.

Tribes regulate on-reservation fishing by Tribal members. Tribes permit non-Indians to fish on reservations.

Increased land development, industrialization, logging, dam construction, and pollution cause reductions in natural salmon production, while a growing sport and commercial fleet places unprecedented demands on the salmon resource.

1964 State Game and Fisheries departments seek court rulings prohibiting net fishing by Indians outside of State regulated times and places in off-reservation fisheries.

1968 U.S. Supreme Court reaffirms that Indian treaties are "supreme law" and binding on the State — as stated by the Constitution — and that the State can restrict Indian net fishing only if necessary to prevent the destruction of the resource.

1969 State Game and Fisheries Departments ask State court for further clarification of State regulatory authority under U.S. Court ruling.

1970 State courts tell fish management agencies that regulations prohibiting tribal net fisheries are unreasonable and unnecessary for conservation.

1973 U.S. Supreme Court upholds tribal rights to net fish commercially for steelhead and tells State court to determine formula for allocating fish between Indians and non-Indians.

1974 U.S. District Court in **U.S. v. Washington** upholds the right of Tribes to fish and to manage fisheries under early treaties, determines they are entitled to an opportunity to share equally in the harvest of fish in their traditional fishing areas, and finds that State regulations which go beyond conserving the fishery to affect the time, place, manner and volume of the off-reservation treaty fishery are illegal.

1975 U.S. Circuit Court of Appeals upholds District Court, holding that by treating treaty Indians no differently than other citizens, Washington had rendered treaty guarantees meaningless. Court upholds tribal self-regulation, apportionment of right to fish, and equitable adjustment for Indians as the result of downstream fishing by non-Indians, among other things.

1976 U.S. Supreme Court declines to review District Court ruling thereby leaving the decisions of the District Court and Ninth Circuit courts as the ruling law.

1977-1978 Legal confrontation develops between State and U.S. courts over jurisdiction and interpretation of treaties.

U.S. District assumes management authority over that portion of the salmon resource allocated to treaty Indian fishermen.

Increased resistance to exercise of treaty fishing rights and implementation of District Court orders leads to widespread illegal fishing among non-treaty fishermen.

Federally-appointed Task Force proposes plan to settle growing controversy; plan rejected by the Tribes and the State agencies.

1979 U.S. Supreme Court upholds 1974 District Court ruling. The Court reaffirms that tribal governments, in signing the treaties, did not submit to State regulation, and are still entitled to manage their share of the fishery without interference as long as they continue to protect the resource.

U.S. Senator Warren Magnuson holds Senate commerce committee hearings to determine management directions and needs of the resource.

1980 Carter Administration proposes a $90 million bill for fisheries enhancement, non-Indian gear reduction, and low-interest loans to treaty Indian fishermen in the Pacific Northwest. The Commission and Tribal response states that the bill needs more detail on fish management processes, including research and law enforcement, and should include more money for enhancement. Non-Indian sport fishermen want steelhead decommercialization addressed in the bill. Senator Magnuson holds final Senate commerce committee hearing, then issues his own proposed fisheries management and enhancement legislation. The Magnuson bill includes the Columbia River fishery in the increased monies for enhancement; places responsibility with the Commerce Department rather than the Interior Department; and makes provisions for reduction or total closure of treaty Indian commercial steelhead fishery.

Questions and Answers on Indian Fishing

Many questions are repeatedly asked about Indian fishing methods, catch allocation, competitive advantages, steelhead and other aspects of treaty Indian fishing rights. Candid discussion of these questions can lead to a fuller understanding of the issues and swift and smooth implementation of solutions.

Why should Indian treaties made more than 120 years ago be valid today?

Treaties are constitutionally recognized contracts between sovereign nations. Like the Bill of Rights, and the U.S. Constitution, which are even older, Indian treaties are still binding today. Treaties can legally be changed only by mutual agreement of the signing parties.

But didn't the treaties become obsolete in 1924 when Indians became U.S. citizens?

The granting of citizenship to Indians, which began as early as 1861 and culminated in the 1924 Indian Citizenship Act, did not take away the sovereignty of the tribal governments, nor did it in any way diminish the validity of treaties between those governments and the United States. Specific provisions in the various laws pertaining to Indian citizenship preserved the special relationship between Indians and their tribal governments, as well as the trust relationship between the Tribes and the federal government. It is not anomalous for Indians to be citizens of both a Tribe and the United States. In fact, every American has both the benefits and the responsibilities of multiple citizenship, being a voting participant in city, county, state and federal government systems.

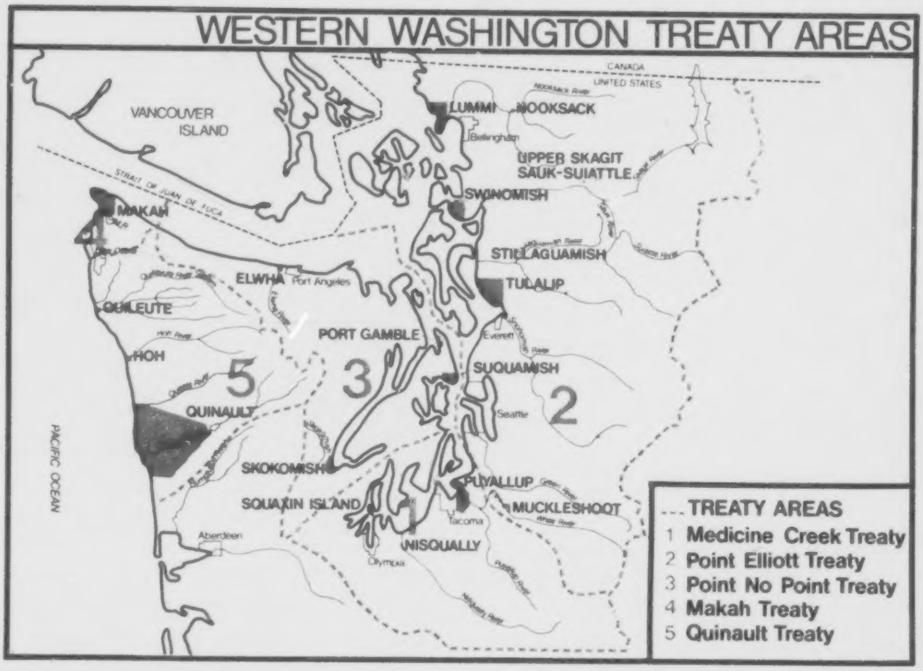
Why should a mid-19th century treaty be enforced so suddenly today?

The treaties have not been enforced suddenly. Clarification of treaty fishing rights was not needed during the first quarter century after the treaties due to an absence of fishing pressure. Equitable distribution became increasingly difficult as population and fishing pressure grew. Treaty fishing rights were upheld by the U.S. Supreme Court as early as 1905 in **U.S. v. Winans**, which struck down State-authorized non-treaty preemption of fish runs bound for reservation waters. Most of the 20th century has seen continued work by the Tribes to secure their treaty rights and to force State recognition of those rights. For the past 15 years, courts have ordered the State of Washington to accept and enforce the treaties.

Why should a small proportion of the population be allowed the right to catch 50 per cent of the harvestable fish?

The treaties do not stipulate population numbers, even though at the time of the treaties Indians were harvesting more than 90 per cent of the territory's fish. Contracts cannot be broken because of population increases by one of the signing parties. A legally-recognized property right is not altered by the increase or decrease in the number of people who hold that right.

Tulalip Elder Harriet Dover addresses her Tribe on the significance of the First Salmon Ceremony. The annual ceremony celebrates the beginning of the salmon harvest with a giving of thanks and prayers for continued good salmon returns.


WESTERN WASHINGTON TREATY AREAS
CANADA
UNITED STATES
VANCOUVER ISLAND
STRAIT OF JUAN DE FUCA
LUMMI
NOOKSACK
Nooksack River
Bellingham
UPPER SKAGIT
SAUK-SUIATTLE
Skagit River
SWINOMISH
STILLAGUAMISH
Stillaguamish River
TULALIP
MAKAH
ELWHA
Port Angeles
Elwha River
QUILEUTE
Hoh River
HOH
PORT GAMBLE
5
3
SUQUAMISH
2
Seattle
Everett
Snohomish River
QUINAULT
Quinault River
Chehalis River
PACIFIC OCEAN
SKOKOMISH
SQUAXIN ISLAND
PUYALLUP
MUCKLESHOOT
Green River
White River
Tacoma
NISQUALLY
Olympia
Aberdeen
Puyallup River
Nisqually River
TREATY AREAS
1 Medicine Creek Treaty
2 Point Elliott Treaty
3 Point No Point Treaty
4 Makah Treaty
5 Quinault Treaty

The treaties do not specify 50 per cent allocation; how was that percentage arrived at?

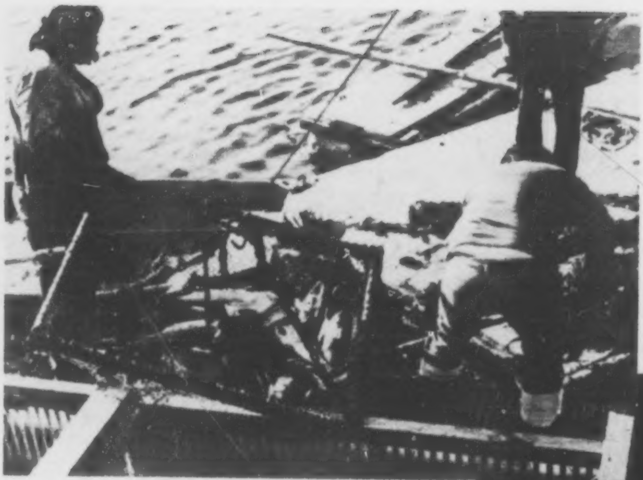
The U.S. Supreme Court has ruled that the treaties did not involve a grant of rights **to** Tribes, but rather a grant **from** them to the U.S. Since the two governments were bargaining as equals, the phrase "in common with" has been interpreted as entitling the parties to equal share in the fish harvest.

Are any specific locations defined as usual and accustomed fishing areas either on or off reservations in the treaties?

Although the Treaties do not specify usual and accustomed fishing areas, the Tribes recognized ownership at the times of the treaty signings. Dr. Barbara Lane, anthropologist, cites as an example the Makah Tribe, who are part of the Nootkan culture, recognizing ownership of "not only (the) rivers and fishing places close at hand, but of the waters of the sea for miles off shore, all of which were privately owned." Indians were recognized at the time of the treaties as legal holders of the land. The treaties were negotiated so settlers could obtain U.S. land patents for their claims. The Tribes extinguished title of most of their land, in exchange for federal protection of their reserved lands and fisheries.

Why don't the Indians still fish in their traditional ways, the way they did at the time of the treaties?

The treaties made no specification that Indians could not improve their gear with the passage of time. Many Indians added motors to their rowboats and skiffs for the same reason that non-Indian gill netters switched from sailboats to high-powered engines. Nevertheless, many other Indians still fish with hand-operated nets and boats; and, except for the use of motors, virtually all Indian fishing is still carried on as it was a century ago. Traps and weirs used during treaty times by the Indians were very efficient. In addition, many of the fishing methods and gear used by non-Indians today are adapted from methods the settlers learned from the Indians more than a century ago.



Northwest Tribes have a tradition of fishing for commercial use. **Left:** Unloading a tribal fisherman's catch at the Lummi Indian Fish Company (photo courtesy Lummi Tribe). **Below:** Processing sockeye salmon at the Quinault Tribal Seafood processing plant.

Have Indians always fished for commercial purposes?

Yes. Even before the settlers arrived, fish were the basic element in Indian trade, and were used extensively as an exchange for other goods. The commercial aspect of the Indian fishery was also an important part of treaty negotiations. Negotiators recognized the contribution Indian fishermen had made to the territorial economy, since Indians then caught most of the fish used by non-Indians for sustenance and for commercial export.

Do Indians receive special advantages?

In most ways, Indians do not enjoy the special advantages many imagine they receive. Indian fishermen are licensed and regulated by tribal governments for protection of the fisheries, just as non-treaty fishermen are by the State. But unlike non-Indians, Indian fishermen have a treaty-guaranteed property right to fish that goes beyond any State or Federal law. Further, though Federal law exempts treaty Indians from many state and federal taxes, they pay federal income tax and all sales taxes, as well as being subject to tribal taxes and a whole system of tribal law that never touch non-Indians.

Doesn't the U.S. Constitution guarantee all citizens equal protection under the law?

Yes—but equal protection under the law is not the same thing as absolute equality. Many citizens of the United States enjoy special privileges or rights that are not held by others. Senior citizens, for example, are entitled by law to certain opportunities that compensate them for their disadvantaged position in our society. Veterans receive special education and health care benefits. In addition, citizens must attain a certain age before they are entitled to drive, consume alcohol, or vote. There are inequalities in every level of our society; laws and court rulings prescribing what appears to be "special treatment" for certain groups are for the purpose of protecting the rights that **all** citizens hold. In the case of Indians, of course, the so-called "special rights" were not "granted" by courts at all, but were simply reaffirmed as rights that the Tribes had held long before the coming of the non-Indians, and had never given up, either by treaty or by any other legal means.

What did U.S. v. Washington do?

The 1974 ruling by Federal Judge George H. Boldt in U.S. District Court recognized among other things the treaty right of Indians to fish in their usual and accustomed places in off-reservation waters. The ruling, upheld by the U.S. Supreme Court, apportioned the harvestable salmon catch between treaty and non-treaty fishermen. The locations of the Tribes' accustomed fishing sites were also established from historical evidence.

Most important, the ruling upheld the right of the Tribes to participate in the management and regulation of fishing. The Tribes and the State were ordered to work together to protect and replenish the salmon runs; and the Court retained jurisdiction to examine the effects of environmental mismanagement on the salmon and steelhead resources. "Phase II" of **U.S. v. Washington**, set aside during the original trial and now pending on the federal docket of the Ninth Circuit, will clarify the treaty right to hatchery-produced fish, the extent to which the treaties guarantee continued protection of the salmon resource, and the right of the Tribes to have a voice in that protection.

Was Federal Judge George Boldt partial to Indians?

Judge Boldt's ruling in **U.S. v. Washington** was based on careful examination of the treaties, legal precedents, anthropological evidence and the U.S. Constitution. The fact that the parties to fishery lawsuits are Indians and non-Indians does not alter the law. All judges — state and federal — are bound to uphold the U.S. Constitution. The Constitution says plainly that, ". . . all treaties made, or which shall be made, under the authority of the U.S. shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

The treaties reserved the Indians' right to take "fish. . . in common with all citizens of the Territory. . ." Judge Boldt followed a long Constitutional tradition in making his rulings, and the three judges of the Ninth Circuit Court of Appeals in San Francisco unanimously upheld his decision in a long and detailed opinion of their own. Nine other judges of the Ninth Circuit later also supported the decisions by refusing to hear any further arguments on the case. The U.S. Supreme Court likewise upheld the treaties.

Did the U.S. Supreme Court change U.S. v. Washington in any way?

The U.S. Supreme Court said that the District Court was justified in upholding and enforcing the right of the tribal governments to manage and to share equally in the harvest. The Court also ruled that the on-reservation ceremonial and subsistence catches should be counted as part of the treaty share of 50 per cent. The 50 per cent, the Court stated, represents a ceiling rather than an approximate figure for the treaty allocation.

Didn't the U.S. Supreme Court rule that Indians can fish only for a moderate income?

Nothing in the original treaties suggests that Indian income from fishing should be limited. The intent and impact of the Supreme Court's "moderate living" clause has not been fully clarified; but it is unlikely that it was intended to restrict Indian fishermen to a poorer income than that enjoyed by non-Indian fishermen. Yet even now, years after the original **U.S. v. Washington** ruling, very few Indian fishermen enjoy the standard and style of living that is commonplace among most non-Indian fishermen. Many non-Indian fishermen are part-timers, using commercial fishing to supplement their income from a separate full-time job. Other non-Indians fish several different vessels, gear types, and areas such as Alaska. Though this is far less common among treaty fishermen, it seems doubtful that the Court intended to prohibit Indians from exercising their equal right to a profitable income through competitive free enterprise.

Why are non-treaty fishermen restricted more than treaty fishermen?

Under the treaties and the law, both treaty Indian and non-treaty fishermen must have an equal opportunity to half of the harvestable fish. Opportunity must include time, availability **and** fishing power. Before **U.S. v. Washington**, Indians were unable to catch their share of the fish because most of a run had been caught before it reached Indian nets. Indians were forced to close their fisheries in order to allow spawners to go upstream. In addition, Indians did not have the fishing power to compete with increasing numbers of licensed non-treaty fishermen. Now, non-treaty fisheries must share the conservation burden with the Tribes. They must allow enough fish to pass through their fisheries so that treaty Indian fishermen have a chance to fish without having to close for conservation. Non-treaty fishermen undergo greater restrictions because their share of the harvest must be divided among five to six times as many fishermen as the treaty share.

How is Indian fishing regulated if not subject to State jurisdiction?

Tribal governments regulate Indian fishing, with guidelines imposed by the U.S. District Court. Every Tribe adopts fishing regulations in accordance with sound fisheries management. The Tribes and the State work together in drafting their fisheries regulations. Tribes have fisheries biologists on staff to assist in drafting regulations and monitoring the fishery. They also have the capability to enforce their regulations and prosecute violaters. Every precaution is taken to protect the valuable fisheries resource.

Isn't it unfair for Indians to be self-regulating and self-policing, while non-Indian fishermen are under government control?

Indian fishermen are under government control, too. Tribal governments regulate and enforce Indian fishing consistent with the need for protection of the resource, and they do so with the same diligence and expertise as that with which the state regulates non-Indian fishing. In addition, court rulings have held that Indian fishing **is** subject to state regulation in matters where conservation of the fisheries resource is at issue.

Why aren't the Tribes doing something to build up the fish resource?

They are. In addition to protecting watersheds under their control where fish spawn naturally, treaty Tribes in this area operate numerous fish production and rearing facilities, and annually release nearly a fifth of all artificially produced salmon and steelhead in Western Washington waters. (See pp. 14-15).

Isn't steelhead a game fish that may be caught only by sportsmen with a hook and line?

Steelhead became a "game fish" only after the State passed a law to that effect in 1925. Before that time, it was a commercial fish like any other salmonid, caught by all fishermen. Now State citizens are restricted by State laws, which limit steelhead harvest to sport gear. However, Indians were netting steelhead when the treaties were signed and they retain that right today. Under the U.S. Constitution treaty rights supersede State law. Some tribal groups have indicated a willingness to restrain their net fishing for steelhead, providing arrangements can be made for an alternate winter fishery; but other Tribes rely on continued steelhead harvests for their livelihood. The Tribes are using their fisheries programs to research and enhance the steelhead resource so that there will be more fish for everyone, and so that precious native runs will not be destroyed.

Do Indian nets destroy fish runs?

No. Through hundreds and hundreds of years of fishing, the Indians maintained the runs that non-Indian exploitation has severely diminished in just 60 to 70 years. At the time of **U.S. v. Washington**, treaty Indians caught only about five per cent of the commercial salmon harvest.

Puyallup tribal fisheries technicians transfer hatchery-incubated chum salmon fry into a waiting tank truck prior to releasing them into a nearby stream. In one of the Tribe's salmon research experiments, the fry were marked with fluorescent dyes to enable biologists to chart their migration when released.

They still average less than 30 per cent of the catch in Washington. Thorough investigation over a three-year period of litigation in **U.S. v. Washington** of charges that Indians have destroyed the fishery revealed a complete absence of any credible evidence. On the contrary, treaty Tribes have employed fishery biologists, adopted their own fishing regulations, instituted their own enforcement programs and launched extensive enhancement programs to expand the fishery for all fishermen — treaty and non-treaty, sport and commercial.

What about Indian nets stretched across the stream, taking every available fish?

Biologists and commercial net fishermen alike know that there is no way that anyone can "take every fish that goes by." Even with a net stretched completely across a stream, more fish get past — either by going under or around the net, or by passing through its meshes — than ever get caught. Documented scientific studies have shown that set gill nets, because of their mesh construction, consistently miss more fish than they catch, and that no damage is done to salmon runs by nets spread across streams. The Tribes manage river net fisheries to allow for adequate spawning escapement.

If Indian fishing isn't harming the resource, what factors are causing the problems?

Many factors, both man-made and environmental, affect the fishery resource in Washington coastal rivers and streams and Puget Sound waters. The main factors that have contributed to the historical decline of the salmon and steelhead runs include logging practices; habitat damage caused by construction and urbanization; pollution; over-development of the fishing fleet; over-fishing; and the effects of power dams, including alteration of water flows, destruction of watersheds, damage to spawning beds and blockage of fish migration.

Interception by the ocean troll fleets, American and Canadian, has also impacted fishing in inside waters. A Pacific Fishery Management Council report shows that 80 percent of some stocks are harvested in the ocean, cutting deeply into the harvest of commercial net fishermen, both treaty and non-treaty.

How can these problems be solved?

The treaties between the tribal governments and the United States government are still binding today under Constitutional law. The federal government is legally bound to protect treaty Indian fishing rights, and secure protection for the salmon and steelhead resource through wise fisheries management, ensuring resource propogation and the continued right to an equitable share of the harvest of salmon and steelhead.

Thus, the treaties and their subsequent upholding by **U.S. v. Washington** and the U.S. Supreme Court serve as a means of protecting the fish for all users, commercial and sport, Indian and non-Indian. Support for Indian treaty rights is support for the continuation of the salmon and steelhead resource.

What can I do to support the Indians and their treaty rights?

Familiarize yourself with the facts, and let others around you know how you view the situation. Many people — hearing only one side — believe there is only one side. Speaking out, even privately, can make an important difference.

Let community leaders know that Indians have support within the community. Misinformed opposition to treaty rights and to Indian fishing efforts has been extremely vocal. Let leaders know that not everyone agrees with such views.

Join community groups that endorse the Indian position and give them whatever support you can. The American Friends Service Committee and the National Coalition to Support Indian Treaties are groups supporting treaty Indian fishing rights.

Photo courtesy Lummi Tribe

Fishing Treaty Facts and Figures:

1. Total Treaty Indians:	Approximately 14,000 formally enrolled in Puget Sound and Coastal treaty areas.
2. Indian fishermen:	1,400 treaty Indian fishermen with tribal permits as compared with 5,700 non-treaty commercial fishermen.
3. Fish planted by treaty Tribes (1979):	28 million fish: 4,998,000 chinook; 18,478,000 chum; 4,067,000 coho; 483,000 sockeye; and 470,000 steelhead trout

TREATY AND NON-TREATY FLEET SIZES IN THE US. v. WASHINGTON CASE AREA, 1977-79

Treaty	Troll	Power Reel Marine Gillnet	Purse Seines	Handpull Gillnet Marine Skiffs	River Fishermen	Beach Seine	Reef Net	Other[1]	Totals
1977	39	245	10	313	508	6	—	—	1,121
1978	56	296	10	390	620	8	—	—	1,380
1979	75	351	14	422	968	30	2	287	2,149
Non-Treaty[2]									
1977	3,049	1,795	398	—	—	-	78	—	5,320
1978	3,065	1,814	399	—	—	-	74	—	5,372
1979	2,841	1,794	389	—	—	-	68	—	5,092

[1] "Other" includes set and drift nets, spear, gaff, dipnet, trap, polenet, stakenet and other traditional gear, including smelt and other non-salmon gear.

[2] Numbers of licenses issued by Washington Department of Fisheries for non-treaty fleet includes licenses for ocean, Puget Sound and Grays Harbor, but does not include those issued for Willapa Bay and the Columbia River. Non-treaty figures based on preliminary data provided by the Washington Department of Fisheries.

TREATY v. NON-TREATY CATCH IN U.S. v. WASHINGTON CASE AREA FOR ALL SPECIES COMBINED FROM 1970-1977[*]

	Treaty Indian		Non-Indian	
	Catch	Percentage	Catch	Percentage
4-Year Average (1970-73)	328,888	5.0%	6,231,044	95.0%
1974	788,582	11.9%	5,845,482	88.1%
1975	827,356	12.1%	5,987,374	87.9%
1976	896,153	13.8%	5,600,131	86.2%
1977	1,360,399	16.9%	6,691,223	83.1%

[*] Data provided by WDF and USF&WS; fresh water sport catch is not included in the years 1970-73, except for Lake Washington sockeye, but is included in the years 1974-77 except for jacks. Grays Harbor gill net catches were included only for 1976 and 77, at which time it became part of the Case Area.

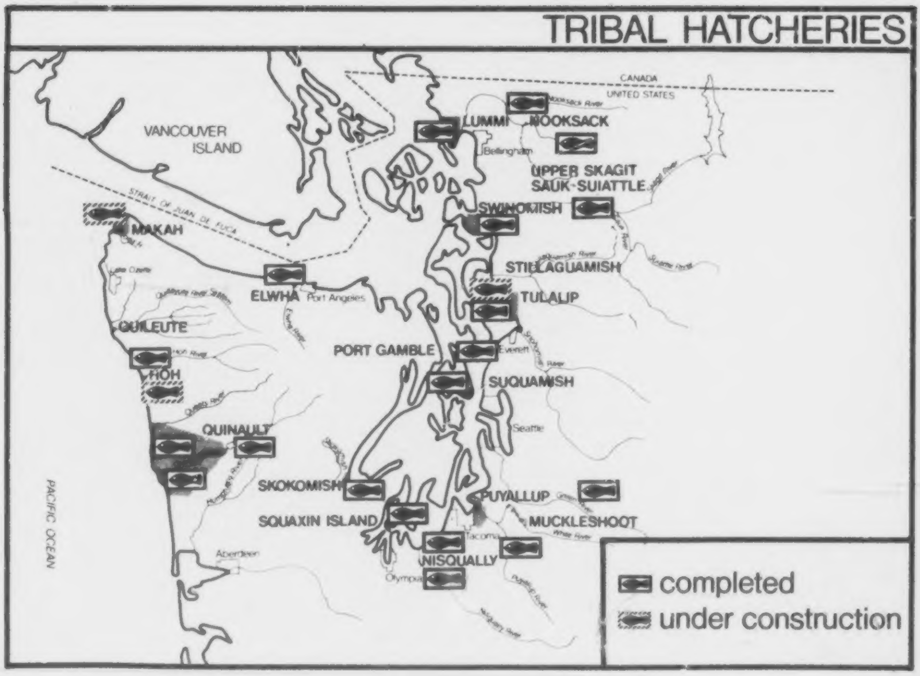
Tribal Fisheries Facilities

Fish production facilities operated and planned:

Makah Treaty Area:	
Makah	- Incubation Box Project on Waatch River Federal hatchery under construction on-reservation
Medicine Creek Treaty Area:	
Nisqually	- Nisqually Hatchery at Mounts Creek Chum Incubation Project at Muck Creek (Exeter Springs) Expansion plans underway
Puyallup	- Puyallup Tribal Hatchery at Rainbow Springs
Squaxin Island Tribe	- Elson Creek Hatchery Squaxin Island Net Pens at Peale Passage
Point Elliott Treaty Area:	
Lummi	- Skookum Creek Hatchery Lummi Bay Sea Farm
Muckleshoot	- Keta Creek Hatchery Burns Creek Station
Nooksack	- Hutchinson Creek Egg Boxes Rutsatz Slough
Skagit System Cooperative (Sauk-Suiattle, Swinomish and Upper Skagit)	- Munk's Creek Facility Napoleon Slough Facility
Stillaguamish	- Armstrong Creek Hatchery
Suquamish	- Grover's Creek Hatchery Cowling Hatchery Floating Net Pens planned for Agate Pass Incubation Boxes planned
Tulalip	- Tulalip and Mission Creeks Stations Hatchery proposed
Point No Point Treaty Area:	
Lower Elwha Klallam	- Lower Elwha River Hatchery
Port Gamble Klallam	- Little Boston Creek Hatchery Middle Creek Hatchery
Skokomish	- Enetai Creek Hatchery
Quinault Treaty Area:	
Hoh	- Chalatt Creek Station, Rearing Pond
Quileute	- Lonesome Creek Hatchery Soleduck Rearing Pond proposed
Quinault	- Lake Quinault Pens Netart Incubation Box Project at Ten O'Clock Creek U.S. Fish and Wildlife Service federal hatchery operates on-reservation Salmon River Station planned Raft River Station planned

- Tribal Processing Plants:

Lummi Indian Tribal Enterprises
Nooksack Indian Fish Company
Quileute Fish Plant
Quinault Tribal Seafood
Skokomish Indian Tribal Enterprises
Squaxin Island Tribal Enterprises on Hartstene Island
Swinomish Indian Fish Company


TRIBAL HATCHERIES
CANADA
UNITED STATES
VANCOUVER ISLAND
STRAIT OF JUAN DE FUCA
LUMMI
NOOKSACK
Bellingham
UPPER SKAGIT
SAUK-SUIATTLE
SWINOMISH
MAKAH
STILLAGUAMISH
ELWHA
Port Angeles
TULALIP
QUILEUTE
PORT GAMBLE
Everett
HOH
SUQUAMISH
Seattle
QUINAULT
SKOKOMISH
PUYALLUP
SQUAXIN ISLAND
MUCKLESHOOT
Tacoma
NISQUALLY
Aberdeen
Olympia
PACIFIC OCEAN
completed
under construction

SALMON AND STEELHEAD RELEASES FROM PUGET SOUND AND WASHINGTON COASTAL TREATY INDIAN HATCHERIES

	Pink	Coho	Chinook	Chum	Sockeye	Steelhead	Salmon Total
1976	409,000	4,244,200	1,992,500	1,705,000	1,236,600	341,400	9,587,300
1977		5,319,000	1,848,000	11,504,000	186,000	288,000	18,857,000
1978	220,000	4,072,000	6,151,000	17,103,000	368,000	197,000	27,914,000
1979		4,067,000	4,998,000	18,478,000	483,000	470,000	28,026,000

Suggested Readings

General Reading on Indian Tribes, Treaty Rights and Indian Fishing

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Costo, Rupert and Henry, Jeannette, INDIAN TREATIES: TWO CENTURIES OF DISHONOR, Indian Historian Press, San Francisco.

Johansen, Bruce and Maestas, Roberto, WASI'CHU: THE CONTINUING INDIAN WARS, Monthly Review Press, New York.

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Native American Solidarity Committee, TO FISH IN COMMON, Native American Solidarity Committee, Seattle Chapter.

Nugent, Ann, THE HISTORY OF LUMMI FISHING RIGHTS, Lummi Communications, Bellingham 98225.

Pembroke, Timothy, THE HISTORY AND CULTURE OF THE TULALIP TRIBES, Tulalip Tribes, Inc., Marysville.

Price, Monroe E., LAW AND THE AMERICAN INDIAN, The Bobbs-Merrill Company, Inc., New York.

Quinault Education Project, THE RIGHT OF TAKING FISH, Quinault Education Project, Taholah 98587.

________________. UNDERSTANDING INDIAN FISHING RIGHTS, Quinault Education Project, Taholah 98587.

Stewart, Hilary, INDIAN FISHING, University of Washington Press, Seattle.

Government and Legal Documents

BACKGROUND INFORMATION ON INDIAN FISHING RIGHTS IN THE PACIFIC NORTHWEST, Bureau of Indian Affairs and U.S. Fish and Wildlife Service, U.S. Department of the Interior, Portland, Oregon.

BRIEF OF RESPONDENT INDIAN TRIBES, Cases 77-983, 78-119 and 78-139, U.S. Supreme Court, October Term, 1978.

HISTORY AND CULTURE OF THE INDIANS OF WASHINGTON STATE: A CURRICULUM GUIDE, Office of the Superintendent of Public Instruction, Washington State, Olympia, WA 98504.

SETTLEMENT PLAN FOR WASHINGTON STATE SALMON AND STEELHEAD FISHERIES, Regional Team of the Federal Task Force on Washington State Fisheries, June 1978.

COMMENTS ON SETTLEMENT PLAN FOR WASHINGTON STATE SALMON AND STEELHEAD FISHERIES and ALTERNATIVE FISHERY MANAGEMENT PLAN, Washington Department of Fisheries, Olympia, WA 98504.

FORMAL RESPONSE TO SETTLEMENT PLAN FOR WASHINGTON STATE SALMON AND STEELHEAD FISHERIES, Northwest Indian Fisheries Commission, 2625 Parkmont Lane S.W., Building C, Olympia, WA 98502.

EXECUTIVE SUMMARY of FORMAL RESPONSE to SETTLEMENT PLAN, Northwest Indian Fisheries Commission, 2625 Parkmont Lane S.W., Building C, Olympia, WA 98502.

U.S. v. WASHINGTON, 384 F. Supp. 312, 384 Federal Supplement, United States District Court, Western District of Washington, Feb. 12, 1974.

Anti-Indian Books on Treaty Fishing Rights

Lowman, Bill, 220 MILLION CUSTERS, Anacortes Printing & Publishing, Anacortes, WA 98221.

Neubrech, Walt and Williams, C. Herb, INDIAN TREATIES: AMERICAN NIGHTMARE, Outdoor Empire Publishing Inc., Seattle, 98109.

Mr. **Heckman.** But unless we present some of it here before the entire group, it will not have the full advantage of understanding of just exactly what it is.

For instance, we heard today from the Washington Department of Fisheries that commercial fishing is a detriment to wild stocks.

I think you probably will hear from the other special interest groups that will follow certain things.

Through years of testimony before State and Federal courts there has never been a shred of evidence to prove that commercial fishing is a cause of the decline of the steelhead. Certainly that has been proven in the *Puyallup* case and the *U.S.* v. *Washington* case.

I also heard the Washington Department of Game say today that the tribes do not have inseason management capabilities. They do not examine the catch, it was said. They do not do this and that.

The fact is that before 1974 the State of Washington Department of Game did not have the foggiest notion of the size of any run of steelhead in the State of Washington. They did not know or even attempt to determine the spawning requirement of any run of steelhead in the State of Washington.

Now they come on as the people with the great management systems.

In fact, as Mr. McMinds said, the tribes are the real and active managers of the steelhead. The tribes do have inseason updating systems. They employ them during the seasons.

They have reliable catch information, and they examine it. They provide it to the Washington Department of Game. In fact, the Washington Department of Game has not been willing to come and examine it along with the tribes.

The Washington Department of Game at the time of the *Boldt* decision did not have information on the run size. So, it was determined that in order to not overimpact the steelhead, that it would be agreed that between the tribal and sports catch that they not harvest any more than had been harvested in accordance with the punchcard information provided to the Department of Game.

In 1977, that information was found to be erroneous by 40 percent favoring larger runs than actually existed.

This created a considerable amount of distortion in the actual sharing of the allocation following the 1974 *Boldt* ruling up until that point.

Since that time, that has been squared away considerably. Actually, the steelhead runs are not declining. The catch by the sportsmen since 1974 is not declining. Our information that we have here for you and the Fish and Wildlife Service has for you here today will prove that out.

I hope that you will give the tribal technical people an opportunity later today to give you the details.

Thank you.

Senator **Gorton.** Mr. Frank?

Mr. **Frank.** The only think I have to add is this.

I heard this in one of the testimonies earlier on modern living: In the Case area, in the State of Washington, most all the tribes in the Case area are below poverty level.

It is very hard for me to sit here and talk about that we are making a lot of money out there. I am an Indian. I have lived on the Nisqually River all my life. My father is 101 years old and lives there.

We have five generations of our family that lives on the mouth of the Nisqually River.

The Nisqually people have watched the fish decline in that river since the management was taken over by the State game department and the so-called good management.

These are real things. All I have to say is this. I do not write these things down. I live these things.

So far as moderate living is concerned, Mr. Chairman, I would like to have the opportunity to have the chairman and some of the committee to make a trip to the State of Washington and see some of the reservations as I see them and some of the rivers and some of the enhancement programs that we have out in the Northwest.

We have a lot of things that really take place so far as trying to protect the anadromous fish of the six species of salmon. We have hydroelectric dams. We have the watershed problem. We have the flow problems that are happening right now in the river. We have the United States-Canada and the North Pacific interceptions and the offshore overcatches.

These are management problems which we have.

I think that all of us—and that means the Senators and the Congress and the Indian tribes in the State of Washington and the States of Idaho and Oregon and Alaska—have to get together and start protecting that resource.

It is going to take all of us to do it.

I do not believe that a bill such as is before us today will do it. We do have to manage our own resources out there. We do have to protect it.

Thank you very much.

Senator GORTON. Thank you.

If that completes your formal testimony, let me ask this.

Mr. Heckman, what is the source of the data utilized by tribal fish managers?

Mr. HECKMAN. The source is field data, largely, which is collected by the U.S. Fish and Wildlife Service and by the tribes and by the Washington State Department of Game.

Senator GORTON. Is it all collected together in one place?

Mr. HECKMAN. No.

Senator GORTON. By one of those agencies?

Mr. HECKMAN. No. I am not sure what you mean.

They collect the data from each of the tribes and from the sports fishery.

Senator GORTON. Is one of those groups in charge of gathering that all together and putting it into usable form? Or do the managers simply get some from this source and some from that source and some from others?

Mr. HECKMAN. In the case of catch data, the State collects it from State buyers and the tribes provide it from tribal buyers. Then, also, they examine the fish tickets that are collected by the State, but which might have errors.

This is all compiled and combined in the records of the Washington State Department of Game.

Senator GORTON. Thank you, Mr. Heckman.

We will now move to the next panel.

We will recess at about 12:30 and return at about 2. There are likely to be numerous interruptions for rollcalls in the afternoon. So, we will ask your patience.

Mr. DeLaCruz?

STATEMENT OF JOSEPH B. DeLaCRUZ, PRESIDENT, QUINAULT INDIAN NATION

Mr. DeLaCruz. Thank you, Mr. Chairman.

I would like to make some introductory statements on this panel before I introduce the other tribal chairmen who are with me.

It has been my understanding through the years in testifying before a congressional committee and State legislative committees that we are more or less under oath. I want to make sure that the record shows that the Indian people who are here today are here today so you will learn the truth that lies behind the smokescreen of rhetoric and misleading statistics that are constantly being thrown about by sportsmen in the Washington Department of Game, and agencies of the State which are run by sportsmen for sportsmen.

Throughout my lifetime, growing up on the Quinault Reservation and growing up on the Quinault River and living on that river with my grandparents, I have been aware of the different efforts by sportsmen, State officials, and all the way up to the Governor's office to take from the Indians.

In the 1930's, I find letters in the Congressional Record of sportsmen trying to take Lake Quinault away from our people.

You find a clear record, in an effort to decommercialize steelhead in 1925, of the type of malicious lies and things that are thrown around and picked up by the press.

It has become obvious to me, through hearings I have sat in, that over a period of almost two generations people begin to believe that mismanagement has been going on and that it is either the Indians' fault or some Federal judge's fault.

I hope, at this hearing on this decommercialization bill, we can get to the facts. I appreciate the committee taking a look at the management of steelhead and, hopefully, river by river it will be done.

Some of these things could be laid to rest.

I noted this morning that there were statements made about the Quinault River and the zero catch on some of the steelhead. That zero catch appeared after the upper Quinault River was closed to summer steelhead fishing.

They made a statement like that and the Washington game people did not clarify it. It was closed in 1978.

A study was done by Dr. Royal, in 1972, on trout and steelhead as to the stocks of steelhead in the State of Washington.

Dr. Royal chose to look at the Quinault, Hoh, and Chehalis. Those rivers that had not been stocked by the game department.

His findings were that those rivers were in pretty healthy shape and the stocks were actually increasing.

It was only on rivers that the department of game had been enhancing with the extra stock that steelhead has decreased. I have referred to this time and time again.

There was the testimony before the legislature. They were concerned about this stocking and what they were doing to the streams.

It was well over 12 years ago. Nobody would pay attention. To me it was like what happened 100 years ago or 150 years ago where you took the diseased blanket and gave it to the Indians. That is what happened to the steelhead stocks on some of these rivers.

Indians have been fishing on some of the rivers and they point to those. But the fact of the matter is that on the coastal streams, which have been managed by the Indian people, you have some of the strongest stocks of trophy fish left in the United States.

I have written testimony that I would like to have included in the record.

Senator GORTON. Without objection, your prepared statement will be inserted in the record following your oral testimony.

Mr. DELACRUZ. Let me point out a couple of things that I feel need to be highlighted.

I talked about the 1925 decommercialization and what happened there, and the record shows that even during that period of the 1920's Indians were blamed for the declines.

At that time, especially on the Quinault system, all the way up through the period of time until a couple of decades ago, Indians were the only ones who fished that river other than sportsmen who come down and fish with Quinault guides. I have guided myself on that river. I know the abundance of fish and why sportsmen come.

But, I want to clarify something that came out in the hearing in Seattle about the type of misrepresentation that happens. It has been said over and over again for a couple of decades. I believe it even convinces new people coming in on the scene and moving into the State that it is the Indians who are the problem.

In Seattle at the hearings—I believe a lot of the figures come from the department of game—and a prime example of gross misrepresentation is S. 874 entitled, the Steelhead Trout Protection Act.

This legislation has nothing to do with protecting the steelhead, but rather conserves the abrogation of treaty rights so that sportsmen might have the exclusive use of the resources for their recreational enjoyment.

Arguments supporting the bill are fraught with gross misrepresentation. As an example, consider the statement that was made by you, Mr. Chairman, in the introduction of S. 874, which contains highly misleading statistics that are apparently intended to deceive the public and the Congress, in thinking that Indians are overfishing the resource because they may account for more than 50 percent of the catch taken from certain rivers.

Two of the rivers referenced were the Queets and the Quinault. They are fished by members of the Quinault Nation.

I would like to take this opportunity to present the true facts underlined in numbers contained in the Congressional Record.

In the 1979–80 season, on the Queets River, our fishermen took 2,298 fish; the non-Indians took 473. On the Quinault River, our fishermen took 4,207 fish and the non-Indians took 160.

The essential fact necessary for the proper interpretation of these numbers is that catch statistics are neither adequate nor appropriate to use as a measure of compliance with the allocation standard set forth by the courts.

The principal governing allocation is opportunity, not catch. Failure to recognize this fundamental fact can easily lead to misinterpretation of catch statistics.

During the 1979–80 season referred to by Senator Gorton on the Queets River, according to the 50 percent allocation rule established by the U.S. Supreme Court, Quinault tribal fishermen were entitled to take 2,300 fish; half of the total number of Queets steelhead determined to be harvestable.

As the catch statistics on the record indicate, the Quinault Tribe took 2,298 steelhead, almost exactly their 50 percent entitlement.

But what about the sport fishery? Because of the lack of sufficient fishing effort, sportsmen took only a small fraction of their share. In fact, after postseason spawning ground surveys had been completed, it was determined that the sportsmen on the Queets River actually had the opportunity to catch 6,995 steelhead without affecting the number of fish necessary for spawning escapement.

This same type of not carrying out the analysis of the figure goes on. This is misleading. Other witnesses come on today. I think they will show that to be one of the things that has happened throughout this controversy.

Thank you very much.

I would like to introduce the rest of the panel. On my immediate right is George Kalama. He is the chairman of the Nisqually tribe. Next is Chris Morganroth, the director of the fisheries program.

We have Mary Leitka, the chairwoman of the Hoh Indian Tribe.

[The prepared statement follows. Testimony resumes on p. 103.]

PREPARED STATEMENT OF JOSEPH B. DELACRUZ, PRESIDENT, QUINAULT INDIAN NATION

Quinault, Queets, Hoh, Bogachiel, Soleduck—these are rivers on the Olympic Peninsula of Washington State where sportsmen go to catch trophy steelhead of extraordinary size and exceptional fighting qualities.

What do these rivers have in common besides healthy populations of wild steelhead so prized by anglers for their recreational enjoyment? The answer may come as somewhat of a surprise to some sportsmen, but all these rivers have had Indian commercial gill net fisheries for steelhead at their mouths for countless centuries.

Steelhead has always been vital to the maintenance and continuity of the fishing cultures and economics of the coastal tribes. Indian people have long believed that the steelhead, like all creatures and plants which share the Earth have conscious spirits that, if treated with honor and respect, cause them to voluntarily and compassionately give their bodies to men during times of need. Through the millenia, a precious bond has been forged between the Indian and the steelhead, especially during the winter months when the resource provides the only source of fresh fish to supply the people with food and commodities for commerce.

The steelhead is a critical element of tribal economics. It provides income for Indian fishermen, serving as a source of tax revenue that is used to provide important services tribal communities; it supports tribal enterprises that process and market the catch; and, it provides a valuable source of protein for winter diets. For the coastal tribes, the availability of steelhead for nearly six months of the year serves as an irreplaceable anchor for our communities because it permits us to sustain our way of life as fishing societies year-round. The crucial importance of fishing as a viable, indigenous economic enterprise that serves as a basis for development capital and employment for Indian tribes cannot be overstated.

Because of our dependence upon the steelhead, we have managed our fisheries with diligence and care. It is no accident that the healthiest runs of wild steelhead in Western Washington are found in streams on the Olympic Peninsula where commercial and sport fisheries have shared the resource for several decades. We have proven beyond any reasonable doubt that the steelhead is not a "fragile" resource that can sustain only sport fishing pressures. The resource has not only survived the impacts of tribal use and management, it has thrived.

Historically, Indian harvest of steelhead were limited by the needs of tribal societies for food and commerce, natural environmental conditions, and commandments dictated from generation to generation by tribal custom and religion.[1] In more recent times, with the coming of the white man, many of these traditional methods of fisheries management have been transcribed into the form of written regulations.[2] We now manage the steelhead just like we manage other species of salmon, as part of the total production of fish from each river system.[3]

The success of tribal steelhead management has been recognized by the courts,[4] scientific researchers,[5] and even sportsmen.[6] Ironically, it has been the very success of tribal management for thousands of years that has led to repeated threats in recent times to deny Indian people of their rights to continue to use the resource as promised in treaties with the United States.

Shortly after anglers learned that they could catch the fiesty steelhead for sport, they mounted a concerted lobbying campaign in the Washington State legislature to decommercialize the fish so they might secure near exclusive privileges of harvest. Since the late 1920's when the State's decommercialization statutes were finally enacted, a bitter struggle has erupted from time to time as sportsmen and Game Department officials attempted to illegally enforce these laws to prevent Indian fishing.[7]

When the courts found that the state laws did not apply to treaty-protected Indian fishing, sportsmen turned to the means of physical intimidation and the proliferation of countless rumors, allegations and misrepresentations to accomplish their ends. Throughout the history of the conflict over steelhead, the Indian has been used as a scapegoat to cloak the greed of sportsmen and the ineptness of resource management by the State. For instance, in testimony presented before a U.S. Senate Committee in 1964. Sportsmen and employees for the State agency established to serve their special interests, the Department of Game,[8] made numerous allegations that Indian net fisheries which were unregulated by the State were destroying the resource, even though the evidence clearly showed that sportsmen were harvesting the vast majority of the fish.[9] Similar insinuations have run rampant over the years, often with the assistance of state officials. Testimony presented in 1979 before a U.S. Senate Committee contained evidence of a conspiracy involving sportsmen, officers of the Washington State Departments of Fisheries and Game, the State Attorney General and the Governor's office designed to seek public sympathy to eliminate Indian fishing rights by a planned program of intentional over-fishing.[10]

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[1] *U.S.* v. *Washington,* 384 F. Supp. 312, 387.

[2] Indian net fisheries on the Quinault Reservation have been regulated by the Quinault Tribe through written ordinances since 1916.

[3] The status and management basis for salmon and steelhead stocks for Washington coastal stocks was presented to the Congress in 1979 and need not be repeated here. See testimony of Guy McMinds before the Committee on Commerce, Science and Transportation, on Salmon and Steelhead Stocks, May 16 and 17, 1979.

[4] Id. at 375.

[5] Royal, L. A. 1972. An examination of the Anadromous Trout Program of the Washington State Game Department, unpb. ms.

[6] McMill, Bill, Testimony of Clark and Skamania Country Flyfishers before the Senate Select Committee on Indian Affairs, Hearings on S874, June 29, 1981.

"Sportsmen must begin to re-examine the Indian issue from the standpoint of reality rather than emotion. *The Indians have proven themselves as a powerful national political power who have consistently fought for the correct conservation issues that directly protect adult steelhead, downstream smolts, and juvenile rearing habitat.*

Few Northwest rivers still maintain really strong runs of wild sprawning steelhead and it's no accident that a strong proportion of these happen to be on rivers that have Indian reservations that use, protect, and in some instances even enhance these wild populations—rivers such as the Quinault, Queets, Hoh, Deschutes and Klickitat being among them. Unless Indians can continue to catch these steelhead commercially, there will be no reason for them to protect steelhead habitat and certainly no reason for enhancement projects such as that on the *Quinault River where steelhead are selected and reared in the best managed quality steelhead hatchery program south of the Canadian border—a management that fills the Quinaults' commercial needs and provides for excellent adult escapement for anglers and wild spawning.*

Olympic Peninsula anglers have recognized the merits of this Indian program, and the sensible cooperation of the Forks Chapter of Trout Unlimited with the Quinaults, Queets, and Hoh River Indians has resulted in quality hatchery programs on four peninsula rivers—one state funded and the others Indian—that benefit both user groups. This should be a working model for the rest of us, but has somehow been ignored.

The Indian has earned his right to steelhead which has been an essential cog in the Northwest Indian lifestyle and working economy for countless centuries." (emphasis added)

[7] U.S. Commission on Civil Rights, 1981. "Indian Tribes—A Continuing Quest for Survival."

The Quinault Tribe was engaged in litigation over the attempted illegal application of state decommercialization laws to fish taken on-reservation as early as 1930. At that time, the Washington State Supreme Court enjoined the State from interfering with the exercise of the tribal fishing right holding that: "The Quinault Indians own the fish in the Quinault River by the same title and in the same right as they owned them prior to the time of the making of the treaty, and the State has no right to interfere with or control their right to take fish from a stream which crosses the reservation." *Pioneer Packing Co.* v. *Winslow*, 294 Pac. Rept. 557, December 29, 1930.

When put to the test of proof, these allegations concerning Indian fishing have been proven to be false. During the course of a three-year long trial concerning treaty fishing rights, no credible evidence could be presented to show any instance where Indian fishing had damaged the resource.[11] It would of course be absurd for Indians to willfully damage a resource so integral to their heritage and in which they have a direct and enforceable property interest. To protect the resource and the treaty fishing right, the court established stringent management standards designed to virtually eliminate any potential possibility of future over-harvest by Indian fisheries.[12] As integral parts of these procedures:

1. The treaty catch is regulated on the basis of the number of fish that tribes are lawfully entitled to harvest without damaging the resource. This number is determined jointly by the tribes and the Washington Game Department[13];
2. The allocation of harvest is based upon the principle of opportunity;
3. The catch must be strictly controlled so as to prevent harm to the resource resulting from either over or under harvest; and
4. The Tribes and the Game Department exchange information concerning the resource. Tribes prepare technical reports containing data essential to the proper management of the resource and describing policies governing regulation of tribal fisheries and operation of enhancement programs. During the fishery, data collected by the tribes provides the basis for updating estimates of run size.

Yet the myth of Indian over-fishing continues. Today the battlefield over steelhead has moved from the rivers to the Congress and the weapons of intimidation have been changed from nightsticks to statistics.[14] The issue has become so clouded with rumors, allegations, and misrepresentations that it is difficult for anyone who is not intimately familiar with the situation to sort out the true facts.[15] Specious arguments favoring decommercialization abound, masking the selfishness and hypocrisy of sportsmen in the confusion of numbers, the altruism of "conservation",[15a] and the guise of economic austerity.

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[8] The Game Department consists of a six-member commission comprised of sportsmen who are appointed by the Governor. According to the July 1981 draft strategic plan of the Washington Department of Game, the agency is mandated to "preserve, protect and perpetuate the wildlife of the State of Washington while maximizing public recreational opportunity." It seems rather obvious that one way the Game Department has chosen to satisfy its sportsmen constituency and fulfill its agency mission is to improve recreation at the expense of treaty fishing rights to take steelhead. There are some seventy-five species of resident and anadromous fish besides steelhead in the inland waters of the State (28 classified as "game fish") that provide recreational enjoyment for sportsmen. Less than 18 perecnt of the persons who purchase fishing licenses, also fish for steelhead.

[9] Indian Fishing Rights, hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, United States Senate, 88th Congress 2nd Session, on SJ170 and SJ171, August 5 and 6, 1964.

[10] Adams, H. "Who is Don Bonker and Why are Sportsmen Saying All Those Nice Things About Him?". Washington State's Salmon and Steelhead Resources, hearings before the Committee on Commerce, Science and Transportation, 96th Congess 2d Session, on S2163, February 11 and 12, 1980, pages 200–203.

[11] *U.S.* v. *Washington*, 384 F. Supp. 312, fn 26 at 338–9; FF246–7 at 398.

[12] Order on Certain Questions Re: Steelhead Fisheries Management, September 14, 1976 (*U.S.* v. *Washington*).

[13] Tribal catches of steelhead are reported and compiled during the season through the use of landing tickets. The Game Department estimates sports harvests in season on only eight rivers through creel census programs. For the vast majority of streams fished by sportsmen, no estimate of sport catch is obtianed until several months after the season has been completed when punch card statistics are generated. Because there is no in-season reporting system for non-treaty sport fisheries, the only reported in season catch is that taken by treaty fisheries. This leads to the proliferation of misleading and inflammatory "scorecards" published by various sportsmen interests showing "disparate and unfair" sharing.

[14] "Senator Debates Indians on Steelhead Issue", Seattle Post Intelligencer, July 10, 1981.

[15] Persons with the courage and integrity to present factual information have sometimes become victims of political suppression (see Adams, supra).

A prime example of such gross misrepresentation is S874, entitled the "Steelhead Trout Protection Act." This legislation has nothing to do with protecting the steelhead, but rather concerns the abrogation of Indian treaty rights so that sportsmen might have the exclusive use of the resource for their recreational enjoyment. Arguments supporting the bill are fraught with gross misrepresentations. As an example, consider the statement of Senator Gorton in his introduction of S874 containing highly misleading statistics that are apparently intended to deceive the public and the Congress into thinking that Indians are over-fishing the resource because they may account for more than 50 percent of the catch taken from certain rivers.[16] Two of the rivers referenced, the Queets and Quinault, are fished by members of the Quinault Nation and I would like to take this opportunity to present the true facts underlying the numbers contained in the Congressional Record.

1979–80 season

Queets:	
Indian	2, 298
Non-Indian	473
Quinault:	
Indian	4, 207
Non-Indian	160

The essential fact necessary for the proper interpretation of these numbers is that catch statistics are neither adequate nor appropriate to use as a measure of compliance with the allocation standards set forth by the courts. The principle governing allocation is opportunity, not catch. Failure to recognide this fundamental fact can easily lead to misinterpretation of catch statistics.

During the 1979–80 season referenced by Senator Gorton, on the Queets River according to the 50 percent allocation rule established by the U.S. Supreme Court,[17] Quinault Tribal fishermen were entitled to take 2,300 fish, half of the total number of Queets steelhead determined to be harvestable. As the catch statistics on the record indicate, the Quinault Tribe took 2,298 steelhead, almost exactly their 50 percent entitlement. But what about the sport fishery? Because of a lack of sufficient fishing effort, sportsmen took only a small fraction of their share. In fact, after post season spawning ground surveys had been completed, it was determined that sportsmen on the Queets River actually had the opportunity to catch 6,995 steelhead without affecting the number of fish necessary for spawning escapement.[18]

On the Quinault River, a different situation exists that requires the application of the opportunity rule to non-treaty fishing patterns. The vast majority of steelhead returning to the Quinault River (75 percent–90 percent) are produced entirely within the boundaries of the Quinault Reservation. Once those fish return to reservation waters, the non-treaty opportunity has been foregone and only treaty Indian fisheries are entitled to harvest them under the exclusivity of on-reservation fisheries. Non-treaty sport fishers are legally entitled to an opportunity to take up to 50 percent of the harvestable steelhead destined to return to waters outside the boundaries of the Quinault Reservation.[19]

[15a] One serious side-effect of the steelhead sport fishery is the illegal killing of salmon to obtain bait. An article appeared in the Seattle Post Intelligencer of September 22, 1981 describing the practice of snagging chinook salmon in the rivers, and stripping the eggs for sale to steelhead fishermen (discarding the carcasses). One can only speculate as to the degree that this outrageous practice, caused by the demand of sportsmen for fresh eggs to enable them to enjoy their recreational pleasure in catching a steelhead, contributes to the so-called "value" of a sport-caught steelhead which is frequently cited by anglers in support of decommercialization.

[16] Statement of Senator Gorton introducing S874, Congressional Record, April 2, 1981, S3386. Another frequent improper use of catch statistics by sportsmen interests as "evidence" of overharvest is their use of numbers without reference to changes in fishing seasons for both treaty and non-treaty fisheries or the impacts of enhancement projects. This misrepresentation has frequently been applied to Winter and Summer run steelhead in the Queets and Quinault Rivers.

[17] As a result of the Supreme Court decision in *Washington* v. *Passenger Vessel Association*, 443 U.S. 658 concerning the counting of fish taken on-reservation, the proportion of the havestable part of the coastal steelhead runs allocated to treaty fishers had declined substantially. Yet on many rivers, the non-treaty fishery has been unable to take its share of the resource, resulting in overescapement, wastage and decreased future productivity.

[18] *U.S.* v. *Washington*, Order of May 4, 1981 on Quinault River steelhead.

[19] In 1975, heavy rains caused a 100-year flood on the Quinault River. On the upper streaches of the Quinault, (outside reservation boundaries), spawning and rearing habitat has become unstable; fishing success has decreased because of the accumulation of large quantities of debris, alteration of fishing holes and holding water, and coloration of water by heavy silt loads (in addition, changes in fishing regulation by NPS and WDG have reduced fishing seasons and bag limits).

By virtue of its own management prerogatives, the Quinault Tribe has elected to provide an opportunity for sportsmen to catch steelhead on reservation through the use of guide services provided by tribal members. Over the years, the outstanding quality of steelhead fishing on the Quinault River within the reservation has received the world wide acclaim of sportsmen. The average annual catch has been approximately 1800 steelhead; these catch estimates differ substantially from Game Department estimates because the Quinault Tribe has its own regulatory program and does not require the use of Washington Steelhead Punchcards or fishing licenses. In recent years, the sport harvest on the Quinault River has been depressed due to poor environmental conditions that decrease the efficiency of the sport fishery.[19] On the Quinault River, our management policies have historically controlled the rate of harvest to 50%; thus, sportsmen are afforded their full opportunity to take their share of off-reservation stocks plus an opportunity to fish on substantially larger runs originating entirely on reservation. In the 1979–80 season, for example, the non-treaty sportsmen had the opportunity to catch 415% of their legal entitlement of Quinault River steelhead stocks.

In addition to its two on-reservation fisheries, the Quinault Tribe conducts fisheries on the Humptulips and Chehalis Rivers. Comparable catch statistics for the 1979–80 season for these rivers are:

Humptulips:	
Treaty catch	2, 196
Sport catch	3, 162
Chehalis:	
Treaty catch	613
Sport catch	1, 725

On both these river systems, the Tribe has restricted its commercial fisheries substantially so as to target on smaller, less desirable hatchery-origin fish and to operate during times when the impact upon wild steelhead runs will be minimized. Wild steelhead runs in both these rivers have been the subject of concern expressed by sportsmen and Game Department officials. The record clearly demonstrates that the sport fishery is impacting the so-called "depressed" wild runs to a substantially greater degree than the commercial treaty net fishery.

What has changed since the Boldt decision? Well, for one thing, tribes have been able to exercise their treaty rights to harvest steelhead at their usual and accustomed fishing places without unlawful interference by the State, and of course the allocation of the harvest has changed. But the biggest change has involved resource management practices. In the words of the Washington Department of Game:

"Management of steelhead in streams is very complex due to a number of major factors, including the 1979 U.S. Supreme Court decision which provided for allocation for up to 50 percent of harvestable numbers of steelhead and salmon to Treaty Indian Tribes; physical and biological competition with commercial salmon species; and continuous reduction of adequate streamflows and natural spawning habitat." [20]

There can be little doubt that the management of steelhead in the State of Washington has become more complex with the judicial upholding of treaty Indian fishing rights because, for the first time in its history, the Game Department has been forced to begin managing the resource instead of trying to appease its sportsmen constituents through politically expedient means. There is no doubt whatsoever that as a direct result of the Boldt decision, management of the State's salmon and steelhead resources has improved tremendously.[21]

Indian treaty rights stand at the last bastion to protect the fisheries resource of the Pacific Northwest. The Quinault, like many other tribes in Western Washington, have always recognized the potential benefits which could be derived through the formation of a strong political alliance with sportsmen to pursue common interests in improving management of the resource and protecting vital habitat. Unfortunately, there has been precious little opportunity for Indians and sportsmen to work positively and cooperatively because of the divisive atmosphere created by the single and simple-minded determination of certain leaders within the sportsmen's community and their political allies to decommercialize steelhead.

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[20] WDG, supra. fn. 7.

[21] See statements of Dr. Peter Bergman, Mr. Mike Grayum, Mr. Jack Ayerst, and Dr. Richard Whitney, Hearings on S & SH stocks, supra.

"In response to the needs of the last five years the management of our salmon and steelhead stocks is much more precise than before. To predict the numbers of fish expected to return, new and improved techniques have been developed for updating these predictions into real estimates during the course of the fishery. And the catch reporting system has been greatly improved so that decisions on closing and opening fisheries for protection of stocks can be made in a timely manner."—Dr. Richard Whitney.

It was our great hope that the responsible approach to resolving difficult problems that Congress adopted in 1980 with enactment of PL96-561, the Salmon and Steelhead Conservation and Enhancement Act, would have been given a genuine opportunity to work. The polarization caused by the introduction of S874 threatens to undermine the tremendous progress made over the past several years to reduce conflict and improve the management of the State's fisheries resources for the collective benefit of Indian tribes, sportsmen, commercial fisherman, and the general public.

Sadly, those who prefer confrontation to cooperation always seem to find a way to interface with the process of reason and reconciliation. Within the past few months, there has been a resurgence of violence and vandalism by sportsmen and others who seem intent upon recreating the chaos and controversy of a few short years ago in the hope that Congress will reward their persistent lawlessness by abrogating Indian treaty fishing rights.

These tactics will continue, say the hardcore of dissidents who refuse to respect and abide by the law of the land, until they get their way. The price of peace for steelhead is of course decommercialization. Are some sportsmen so naive or blinded by their fanatical desire to have the "noble steelhead" dedicated exclusively to their recreational pleasure that they really believe their preposterous proposition that decommercialization will improve relationships between Indians and non-Indians?

The grotesque cancer of racism and bigotry has once again begun to fester in the Pacific Northwest and the heat of the controversy over Indian fishing rights is once again being fueled by the flames of confrontation politics. Now is the time for healing, not conflict. The resources conserved in an unproductive war of words and numbers can be far better spent in ways that work to replace divisive, destructive distractions with a climate of mutual trust and common purpose.

Sportsmen have their needs. As Indians, we have ours. There is no rational reason why commercial and recreational uses of the steelhead resource cannot be compatible. Only when people with different cultures and values learn to understand and respect one another can the resolve and dedication be found to build a better future for the steelhead and all the people, Indian and non-Indian alike, who depend upon it for their livelihoods and recreation.

Senator GORTON. Mr. Morganroth.

STATEMENT OF CHRIS E. MORGANROTH, DIRECTOR OF FISHERIES, QUILEUTE TRIBE

Mr. MORGANROTH. Thank you, Mr. Chairman.

Members of the U.S. Congress, Senate, the Senate Select Committee on Indian Affairs, ladies and gentlemen, my name is Chris Morganroth. I am a member of the Quileute Tribe at LaPush, Wash., where I am also employed as director of fisheries.

The Quileute Tribe manages the Quillayute River system which is nearly 1,000 miles of mainstream and tributaries. The entire Quillayute River system lies within the usual and accustomed grounds and stations of the Quileute Tribe.

I would also like to add that I will attempt to enunciate as much as I can because in the last hearing on June 29 I was misquoted on page 190 of the report where it was meant to be salmo gairdneri, which is the genus and species of steelhead, not "Selma Gearhart."

I have seen the white man come and go to the land of the Quileutes for more than 30 years of my own life. Even after we gave up vast amounts of land and the Federal Government reserved portions for the tribe to live on, the white man has still managed to make the Quileute Reservation a base for exploiting the salmon runs.

It does not need to become a base for the white man to exploit steelhead runs while he already has the entire State of Washington.

I could ask you if you would defend the Constitution of the United States. You no doubt would tell me yes, emphatically. Otherwise, you would not be in the position that you are.

However, I will not ask you because I know your answer cannot be the truth. This is clearly shown by your attempts to abrogate or break treaties which are supposed to be protected by the Constitution of the United States in article VI.

By virtue of these treaties: "We are sovereign."

I am telling you here, now, and forever, that my life and my people's lives are not for sale. All the fish where my people live are an integral part of a way of life. As in a tree, it cannot grow or bear fruit if the water is removed.

Likewise, in your society and culture, if your farms were taken away, you would be at near total loss. So the tribes would also be at a loss if steelhead, which is an important part of the Indian life blood, were taken from them.

If you take it away you cannot replace it with anything. No amount of money will buy my people's rights. "There is no substitute."

Mr. Gorton, as an attorney you may have been considered one of the elite, but as a Senator, diplomacy is lost. The bill dispels diplomacy. The bill has managed to generate hostility and antagonism between the Indians and the whites.

The bill contains no truth as I will later articulate. There is no rationale for the findings in it.

Indian people in northwest Washington have been using steelhead for centuries. I do not think I need to present any historical or archeological evidence to show that the tribes were here before the white man.

What is more, the white man did not bring steelhead into this country as he did carp, peacock bass, brown trout, and others.

The natives of this land have an innateness with all the resources of this land. This includes aboriginality, indigenousness, and nativeness of the people Christopher Columbus mistakenly called Indians.

It is my wish that these become part of the record, including the two pages of questions I have presented to the staff.

Senator GORTON. Without objection, that material will be inserted into the record following your oral testimony.

Mr. MORGANROTH. I have an introduction here on an addendum. The controversy surrounding Indian treaties fishing rights has increased in intensity as a result of the introduction into Congress of two bills, S. 874, and H.R. 2978, which would prohibit Indians from fishing commercially for steelhead trout. To a proponent of decommercialization this issue is simple: Non-Indians cannot fish commercially for steelhead. Why should Indians be able to?

This attitude, however, demonstrates ignorance of the treaties between the United States and the Indian tribes. The treaties are like contracts—in exchange for vast areas of valuable land, the United States guaranteed to the tribes certain rights, among them the right to fish in their traditional ways. The following passage might help explain the situation:

A simple analogy would be a contract between a supplier of goods and the Federal Government. Once the supplier transfers the goods, the supplier is entitled to payment. It is not an act of discrimination for the Federal Government to pay the supplier without paying a like amount to everyone else in the country. Indian tribes of the Northwest supplied the land base for the State. Part of the agreement was that they retain certain fishing rights, which were guaranteed by Federal promises. Honoring the promise is no more an act of discrimination than rendering payment to a supply contract.

In other words, if you owned a store and sold someone a gallon of milk for $2, you would expect the buyer to pay the entire $2 to your store. If the buyer offered to give equal parts of the $2 to every store in town—including yours—you would probably object. And if you did get paid the entire $2, this would not make you a "supercitizen," since the $2 is simply what you were owed.

Similarly, the Government owes tribal fishing rights only to the tribes. It does not owe them to non-Indian fishermen because it did not take their land and sign treaties with them. It is essential to understand this before forming judgments about tribal fishing rights controversies.

The analysis of justifications for decommercialization is as follows:

Supporters justify decommercialization on the grounds that commercial fishing causes problems with: No. 1, conservation; No. 2, enforcement; No. 3, the economy of sport fishing areas; and, No. 4, management.

I now turn to conservation.

To an angler, fishing with nets might appear to be an excessively efficient way to fish. Consequently, Indian net fishermen have frequently been charged with destroying the resource.

The Federal court, however, found that these charges were groundless.

> * * * Notwithstanding 3 years of exhaustive trial preparation, neither Game nor Fisheries has discovered and produced any credible evidence showing any instance, remote or recent, when a definitely identified member of any plaintiff tribe exercised his off-reservation treaty rights by any conduct or means detrimental to the perpetuation of any species of anadromous fish.

I will attempt to go over the tables.

Senator COHEN. We will make all of your material part of the record. Without objection, that will appear in the record at this point in its entirety.

[The material follows. Testimony resumes on p. 140.]

Questions for Washington Game Department and Sports Fishermen
Re: Quillayute River steelhead

1. Re: Conservation allegations (Pages 2-5, Quileute Addendum to Testimony)

   What evidence do you have that the steelhead runs are declining?

   a. Have spawning escapements declined? (What data shows it) (see p. 4)

   b. Have total catches declined? (see p. 3a, 4b)

2. Is it true that WDG creel census records show that last year, angler effort on the Quillayute River was greater than ever? (up 16,000 over any previous year on record) (see p. 7)

3. If sport fishing effort is up, how is the Indian commercial fishery hurting the sport fishing industry?

4. Re: Compensation proposals

   If steelhead is decommercialized and Indians are told to rely more heavily on salmon, and that more salmon will be made available to them, will this affect the salmon sport fishing industry? (see p. 12)

   Do the salmon sport fishermen in the state support the exchange of steelhead for salmon? (see p. 12)

5. How many sport fishermen are there licensed in the state?

   How many licensed sport fishermen have purchased steelhead punchcards?

6. How would the general public, including that vast majority of American citizens who would pay for this but who do not fish for steelhead, benefit from decommercialization? (see p. 20, 21)

7. How do you manage the steelhead sport fishery to assure that, if sportsmen are catching more than their allocation, the fishery can be closed down to assure spawning escapement? (p. 21-22)

8. Is the sport fishery regulated on the basis of an allocation of a number of fish for each season, the way the Indian fishery is? (p. 21-22)

9. If Indians were not fishing commercially for steelhead, how much of your WDG management program could be eliminated, without affecting the management functions you now carry out for the benefit of all fisheries? (p. 5-8, 20)

SUGGESTIONS FOR QUESTIONS F[illegible] WASHINGTON DEPARTMENT OF GAME

I. MANAGEMENT OF THE SPORT FISHERY

A. How many rivers do sportsmen fish for steelhead in the State? In the Boldt Case Area?

B. How many enforcement officers does the Washington Department of Game employ to monitor the steelhead sport fisheries in the Boldt Case Area? How many square miles of territory (and miles of streams) does an enforcement officer typically cover? Are there any other duties that these enforcement officers are expected to perform during the steelhead season?

C. How do you determine how many steelhead can be harvested from each river? How do you determine if that number is accurate?

D. How do you determine how many steelhead are caught by the sport fishery?

1. What percentage of steelhead punch cards are returned each year?

2. How many winter run steelhead were harvested by sportsmen during the 1980-81 season?

3. When will estimates of sport catches be available for all the rivers in the Boldt Case Area and the State?

4. If you don't know how many steelhead are actually harvested during the season, how do you control the sportfishery so as to protect the fish needed for spawning escapement?

E. How much would it cost to manage the sport fishery on a sound biological basis?

II. IMPORTANCE OF STEELHEAD TO SPORTSMEN

A. How many sportsmen purcahse steelhead punch cards as compared to the number of sportsmen who purchase salmon permits from the Department of Fisheries?

B. What percentage of the sportsmen who purchase fishing licenses issued by the Washington Department of Game also purchase steelhead punch cards?

C. How many species of fish are available to sportsmen in the inland waters of Washington State? How many of these are managed by the Washington Department of Game?

D. What percentage of the total catch of all species of fish taken by sportsmen in Washington State does steelhead represent?

THE STEELHEAD DECOMMERCIALIZATION BILL AND THE QUILLAYUTE RIVER SYSTEM

Addendum to Statement of Chris Morganroth
For the Quileute Indian Tribe

Prepared By

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Quileute Fisheries Department

To The

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

September 28, 1981

INTRODUCTION

The controversy surrounding Indian treaty fishing rights has increased in intensity as a result of the introduction into Congress of two bills, S. 874 and HR 2978, which would prohibit Indians from fishing commercially for steelhead trout. To a proponent of decommericalization, the issue is simple: non-Indians can't fish commercially for steelhead ---why should Indians be able to?

This attitude, however, demonstrates ignorance of the treaties between the United States and the Indian tribes. The treaties are like contracts- in exchange for vast areas of valuable land, the United States guaranteed to the tribes certain rights, among them the right to fish in their traditional ways. The following passage might help explain the situation:

> A simple analogy would be a contract between a supplier of goods and the Federal Government. Once the supplier transfers the goods, the supplier is entitled to payment. It is not an act of discrimination for the Federal Government to pay the supplier without paying a like amount to everyone else in the country. Indian tribes of the Northwest supplied the land base for the State. Part of the agreement was that they retain certain fishing rights, which were guaranteed by Federal promises. Honoring the promise is no more an act of discrimination than rendering payment to a supply contract.[1]

In other words, if you owned a store and sold someone a gallon of milk for $2, you would expect the buyer to pay the entire $2 to your store. If the buyer offered to give equal parts of the $2 to every store in town (including yours), you would probably object. And if you did get paid the entire $2, this would not make you a "supercitizen," since the $2 is simply what you were owed. Similarly, the government owes tribal fishing rights only to the tribes - it does not owe them to non-Indian fishermen because it did not take their land and sign treaties with them. It is essential to understand this before forming judgements about tribal fishing rights controversies.

The federal courts have determined that among the tribal fishing rights is the right to fish commercially for steelhead. This report will examine the steelhead decommercialization bills, and their relation to the Quillayute River System, a famed sports fishing system on the western Olympic Peninsula of Washington, and the home of the Quileute Tribe of Indians.

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1. Indian Tribes: A Continuing Quest for Survival. U.S. Commission on Civil Rights, June 1981. Pg. 69.

ANALYSIS OF JUSTIFICATIONS FOR DECOMMERCIALIZATION

Supporters justify decommercialization on the grounds that commercial fishing causes problems with:1) conservation; 2) enforcement; 3) the economy of sport fishing areas; and 4) management.

Conservation

To an angler, fishing with nets might appear to be an excessively efficient way to fish. Consequently, Indian net fishermen have frequently been charged with destroying the resource. The federal court, however, found that these charges were groundless:

> notwithstanding three years of exhaustive trial preparation, neither Game nor Fisheries has discovered and produced any credible evidence showing any instance, remote or recent, when a definitely identified member of any plaintiff tribe exercised his off-reservation treaty rights by any conduct or means detrimental to the perpetuation of any species of anadromous fish.
> Unfortunately, insinuations, hearsay and rumors to the contrary, usually but not always instigated anonymously, have been and still are rampant in Western Washington. Indeed the near total absence of substantial evidence to support these apparent falsehoods was a considerable surprise to this court.[2]

More recently, the U.S. Commission on Civil Rights found that "Indian Tribes have been blamed erroneously for the crisis concerning the scarcity of fish."[3]

Notwithstanding these findings, some sportsmen have continued to argue that decommercialization is necessary to conserve the steelhead runs. They contend that there aren't enough steelhead for both sport and commercial fisheries, and so the sport fisheries should have all of them.[4] This argument, which intuitively seems somewhat self-serving, ignores the process by which

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2. 384 F. Supp. at 338-9.

3. Supra fn 1, Pg. 100.

4. Testimony of Robert J. Skanes to Senate Select Committee on Indian Affairs, Seattle, June 29, 1981; Testimony of Jerry Pavletich Before the Senate Select Committee on Indian Affairs, Seattle, June 29, 1981.

steelhead harvests are set.

Prior to each season, tribal and state managers decide how many steelhead should be allowed to spawn in each river system. Only steelhead in excess of the spawning requirement can be harvested, and these are divided 50-50 between treaty and non-treaty fishermen. Since only steelhead in excess of the spawning requirement can be caught, the required number should always escape to spawn, regardless whether steelhead that are in excess of the spawning requirement are sold, stuffed and mounted, fed to a cat, or given away. Whether caught by a sportsman or by a commercial fisherman, a steelhead is just as dead. To argue that commercial fishing will have a bigger effect on spawning escapement than sports fishing, implies that uncaught steelhead, upon hearing that their brethren have been sold (rather than mounted over a fireplace) will become so upset that they'll refuse to spawn. It's obvious that once a steelhead is caught, the other fish will not care one bit whether that fish is sold or not. If the run size is low, then both the sports and commercial catch should be reduced -- equally. There is absolutely no biological basis for selectively reducing only the commercial catch.

What is important is adequate spawning escapement. Proponents of this legislation claim that "the fragile runs of steelhead are being over-fished".[5] Is there any evidence that this is true? Are steelhead escapements and run sizes truly at crisis levels?

In the Quillayute System, there are only 4 years of run size and escapement data; however, there are 27 years of total catch data. If catch is an index of run size, then it's clear that run sizes have not been decreasing over the years; in fact, the trend seems to be a rather steady increase (Figure 1). It's noteworthy that the highest catches have been recorded since the Boldt Decision in 1974. Since wild steelhead generations usually cover 4 years, it

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5. Amato, F. W. 1981. Senator Slade Gorton to the rescue. Salmon Trout Steelheader. 14(6):1.

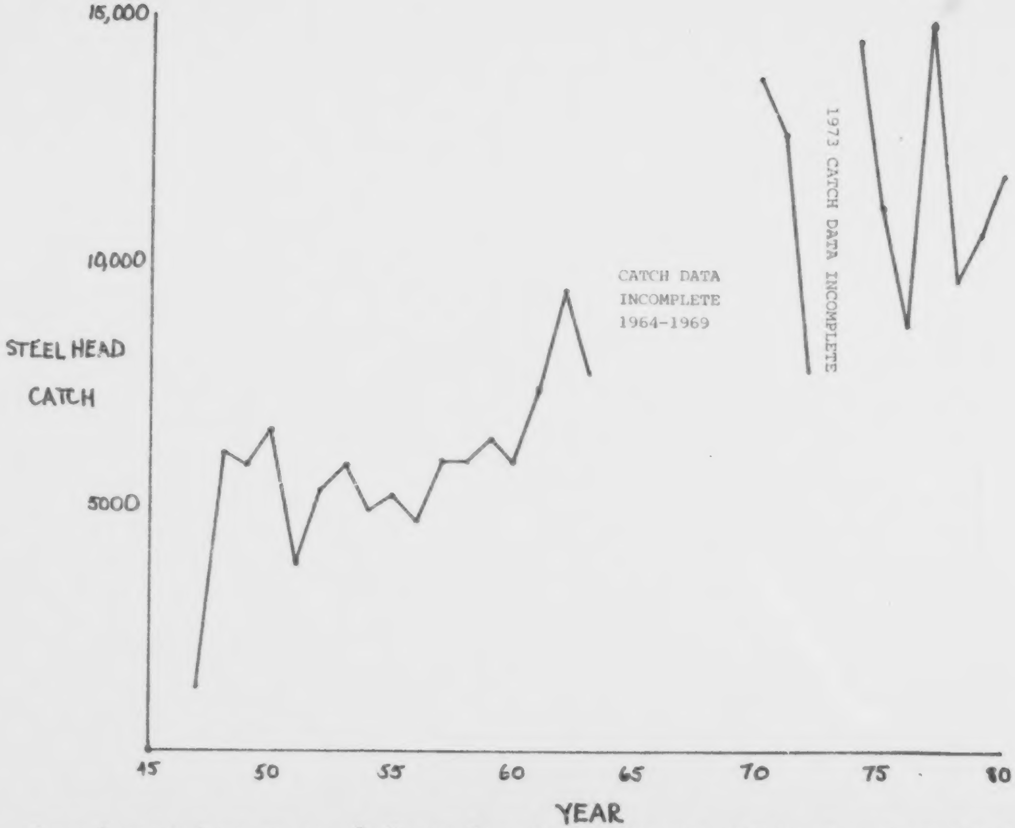

Figure 1. Total Catch on the Quillayute River System 1947-48 to 1980-81. Sport Catch data from Washington Dept. of Game Progress Reports June 30, 1978, June 30, 1979, and June 30, 1980, and from WDG Summary of Sport Catch, March 31, 1981. Tribal catch data from FY 1978 and FY 1980 Quileute Fisheries Annual Reports, and from 1981 unpubl. data.

should be noted that the high catches of the early and mid-70s allowed sufficient escapement to produce catches of similar size in the most recent years. It would thus appear, on the basis of total catch, that there is no crisis for steelhead runs on the Quillayute.

Total catch, however, includes both hatchery and wild steelhead. Hatchery smolt plantings have also increased, from about 25,000/year in the mid-1960s to 100-150,000/year in recent years. Since hatchery runs are now more important in the river system, what is happening to the wild runs?

We have only 4 years of data on run size, escapement, and hatchery/wild contribution, but the Washington Department of Game (WDG) made sporadic aerial flights in 1970,71,72, and 73 to count redds (nests where eggs are deposited) in mainstem sections. Total escapement counts could not be made for those years, but by comparing redd counts over the same sections (Table 1), it is evident that wild spawning escapement was significantly higher in 1978 than it was in the pre-Boldt Decision years of 1970-73.

Over the last four seasons, for which total escapement counts are available, the data show that wild run sizes have been fairly steady (Table 2) More importantly, spawning escapements have been near or above the goal each year, with last season's wild run size and spawning escapement the highest on record.

Furthermore, Quileute Fisheries personnel did field surveys on the upper Bogachiel (a Quillayute tributary) this June, and found high concentrations of rearing trout fry even in very marginal areas.[6] In fact, the concentration of redds, and the density and condition of fry, indicate that there may have been overescapement of wild steelhead last season. At any rate, even with sport and commercial fisheries operating together, it appears that wild steelhead runs in the Quillayute System are well above any crisis level, and are higher than they were immediately before the Boldt Decision.

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6. Chitwood, S. 1981. Upper Bogachiel Study. Quileute Fisheries Department. Ms. in prep.

Table 1. Average monthly redd counts from spawner surveys. Past flights vs. 1978 flights.[1]

Year	Feb.	Mar.	Apr.	May
SOLEDUCK				
Past Flights	--	--	159	177
1978 Flights 2/	--	--	557	437
BOGACHIEL				
Past Flights	--	--	157	242
1978 Flights 2/	--	--	378	297
CALAWAH				
Past Flights	--	--	--	126
1978 Flights	--	--	--	147
QUILEUTE				
Past Flights	--	--	2	15
1978 Flights	--	--	13	16

1/Table taken from: Washington Department of Game, Progress Report June 30, 1978. Pg 87.

2/ Redd counts only in the same areas as flown in the past.

Table 2. Wild run size, spawning escapement, and catch on the Quillayute River System. Data compiled by Dr. Peter Hahn, Washington Department of Game.

Season	Wild Run Size	Tribal Catch Wild Run	Sport Catch Wild Run[1]	Total Spawning[2]	Wild Run Spawning	Wild Run Spawning Goal
1977-78	7046	0	857	8252	6189	
1978-79	7236	2601	295	4769	4340	
1979-80	6842	975	1656[4] 1160	5293	4707	
1980-81[3]	8507	105	1603	8653	6799	4500

1. From creel census estimates, except as noted.
2. This includes hatchery strays. It does not include hatchery rack returns.
3. Preliminary.
4. Punch card estimate.

Even if the wild runs were depressed, selectively prohibiting the commercial fishery would not be the best way to resurrect the runs. Table 2 shows that in 3 of the past 4 years, the sport fishery has caught the majority of the wild steelhead. Clearly, if sportsmen truly believe that wild steelhead runs on the Quillayute are endangered, then the best thing they could do would be to support legislation to ban the sport fishery, which is the fishery that's having the biggest impact on the wild runs.

Enforcement

Proponents of steelhead decommercialization have argued that the commercial fishery is unrestricted, and that tribal enforcement is inadequate.[7] Their conclusion is that fisheries should not be allowed if they are unrestricted or unmonitored.

On the Quillayute, the tribal fishery is both restricted and closely monitored. Long before the Boldt Decision, in 1941, the Quileute Tribe adopted regulations to restrict its fishermen in order to allow sufficient spawning (Figure 2). This ordinance has been revised several times, expanded, and updated, and now forms a quite comprehensive code of law. To enforce these regulations, the Quileute Tribe employs two full-time and one half-time river patrolmen, who patrol the 5 miles of river in which the commercial fishery occurs, and they also check closed areas to be sure no activity is occurring there. The commercial fishery is therefore neither unrestricted nor unmonitored.

Contrast this coverage with that of the sport fishery. To enforce sport fishing regulations, WDG employed one officer (since fired, for trafficking in game animals, and not yet replaced) to patrol the entire area between the Elwha and the Queets Rivers. This area includes the Queets-Clearwater System, the Hoh, the Quillayute (with its tributaries, the Soleduck, Calawah, and Bogachiel), the Hoko, the Lyre, the Pysht, and the Elwha, as well as numerous

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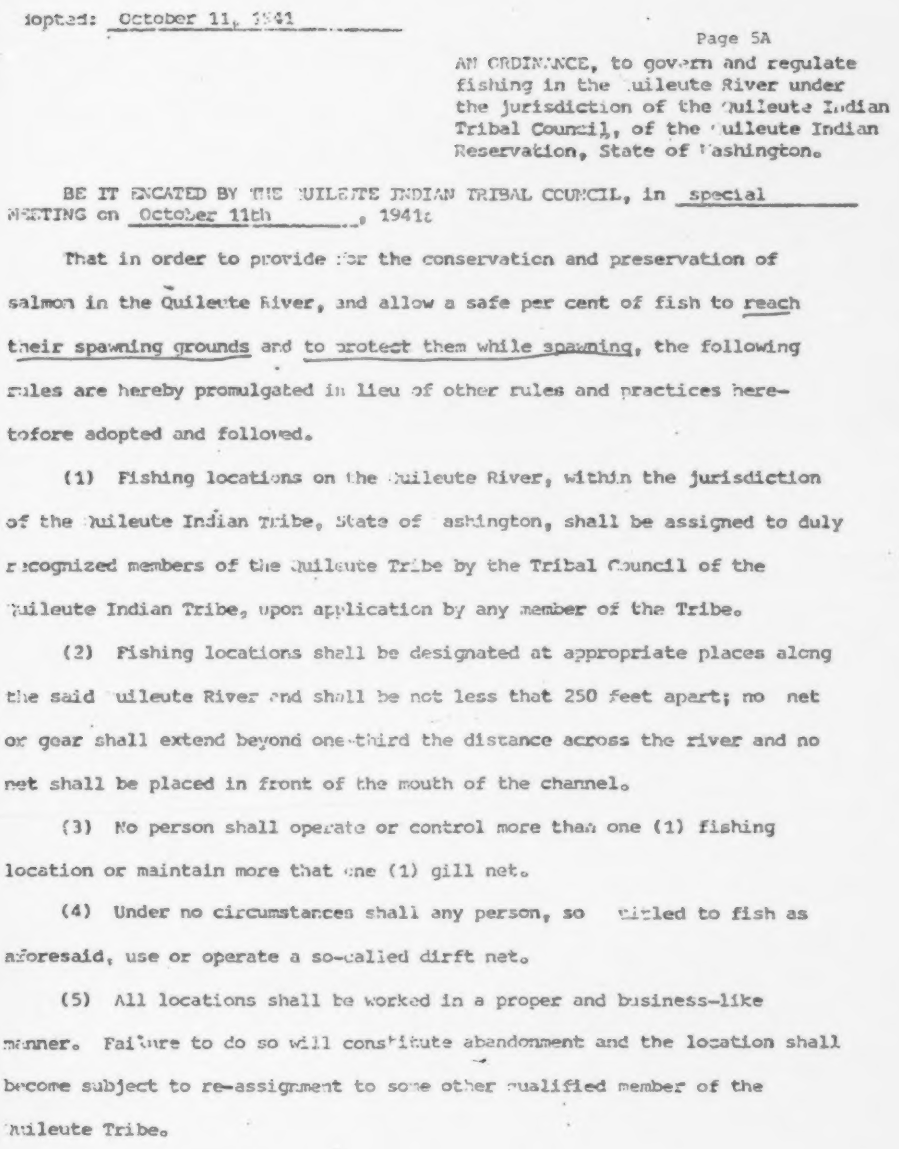
[7] Pavletich, J. Fishing with responsibility. Aberdeen Daily World, March 25, 1980.



Adopted: October 11, 1941

Page 5A

AN ORDINANCE, to govern and regulate fishing in the Quileute River under the jurisdiction of the Quileute Indian Tribal Council, of the Quileute Indian Reservation, State of Washington.

BE IT ENCATED BY THE QUILEUTE INDIAN TRIBAL COUNCIL, in special MEETING on October 11th, 1941.

That in order to provide for the conservation and preservation of salmon in the Quileute River, and allow a safe per cent of fish to reach their spawning grounds and to protect them while spawning, the following rules are hereby promulgated in lieu of other rules and practices heretofore adopted and followed.

(1) Fishing locations on the Quileute River, within the jurisdiction of the Quileute Indian Tribe, State of Washington, shall be assigned to duly recognized members of the Quileute Tribe by the Tribal Council of the Quileute Indian Tribe, upon application by any member of the Tribe.

(2) Fishing locations shall be designated at appropriate places along the said Quileute River and shall be not less that 250 feet apart; no net or gear shall extend beyond one-third the distance across the river and no net shall be placed in front of the mouth of the channel.

(3) No person shall operate or control more than one (1) fishing location or maintain more that one (1) gill net.

(4) Under no circumstances shall any person, so entitled to fish as aforesaid, use or operate a so-called dirft net.

(5) All locations shall be worked in a proper and business-like manner. Failure to do so will constitute abandonment and the location shall become subject to re-assignment to some other qualified member of the Quileute Tribe.

Figure 2. Quileute fishing ordinance from 1941.

*Page 1 of 8 pages

minor drainages that flow into the Pacific or the Strait of Juan de Fuca. In addition to covering these hundreds of miles of streams, this same person also had to enforce the hunting rules over the land area. He had some assistance -- two Department of Fisheries enforcement officers and three creel checkers (who were stationed on the Quillayute System only) -- but obviously they were spread pretty thin. In fact, they were spread so thinly that, although Quileute Enforcement officers also patrolled the sport fishery nearly every day after mid-January, they observed state enforcement officers on the Quillayute System only two times throughout the entire season.[8] To further aggravate the problem of enforcing sport regulations, there were no funds last year for any aerial surveillance, and money will be even scarcer this year.

Contrast the two enforcement systems: one has 2½ officers covering 5 miles of mainstem river; the other had one officer (with occasional help) covering hundreds of miles of streams and thousands of acres of hunting territory. Which fishery has the greater potential for enforcement problems, and, if it's true that unregulated and unmonitored fisheries should not be allowed, then which fishery should be prohibited?

The Effect on Local Economies

Without any substantiating evidence, the steelhead decommercialization bill charges that treaty commercial fishing has had a detrimental effect on the state economy (Sec. 2, (5)). The authors apparently believe that after off-reservation commercial fishing rights were reaffirmed in 1974, sportsmen got discouraged at the prospect of sharing their catch, and spent less money on fishing supplies, fishing trips, and tourist-related goods. This belief has been presented as accepted fact, but to my knowledge, there has been no evidence presented yet to show that either: 1) less money has been spent on steelhead fishing or steelhead-related tourist goods; or that 2) if less money has indeed been spent, that this decrease in spending was caused by off-reservation commercial fishing.

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[8] Unpubl. data from files of Quileute Fisheries Enforcement.

On the contrary, the reverse may well be true in the Quillayute River area. In spite of its distance from the population centers (3½ hours from Olympia; 4 to 5 hours, by two ferries, from Seattle), and the increasing cost of gasoline, local sportsmen say that fishing pressure in recent years, and particularly during the last season, is higher than it has ever been before. Records of sports effort have been kept for only the last four seasons,[9] but the effort measured in the most recent season, 68,018 hours, is over 16,000 hours more than in any of the three previous seasons (data from WDG creel census reports).

If sports effort on the Quillayute is higher than it has ever been, and is still increasing, it seems unlikely that steelhead-related spending has decreased. On the Quillayute, therefore, there does not seem to be any evidence that off-reservation commerical fishing has had a detrimental effect on the local economy.

Management

One of the most puzzling justifications given for steelhead decommercialization is the charge that the court decisions have had detrimental effects "on the ability of the affected States to manage the species effectively" (HR 2978, Sec. 2 (5)). This is simply not true.

This analysis has already noted that data for the Quillayute System on run size, escapement, hatchery/wild contribution, and angler effort go back only 4 years. Collection of this data, which is essential for effective management, has become possible only as a direct result of the Boldt Decision.

Prior to the Boldt Decision, state steelhead management consisted mainly of raising and planting steelhead smolts, and of compiling catch records. The effect of smolt planting was never evaluated, and little concern was ever shown about the accuracy of sports catch estimates that had been derived from voluntary punchcard returns. There was very little research on run sizes, harvestable numbers, escapement, hatchery/wild interactions, optimal time and size of release, the effect of environmental factors on production, or more accurate ways to measure sports catch and effort. In all, the management effort was quite minimal.

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[9] Even with this record high effort, sportsmen caught only 64% of their allowable harvest. The Tribe's fishery also caught less than its share (89% of its allowable harvest), and the sports fishery also had the opportunity to catch the additional 11% of the Tribe's share that was made available to them. If the sportsmen cannot catch their share even with a tribal commerical fishery below them, one must ask what the sportsmen would gain by eliminating the commerical fishery.

After the Boldt Decision, it became a legal necessity to determine run sizes and harvestable numbers on streams in the Boldt Case Area. As a result, both the tribes and the State were able to obtain funds to establish divisions that could manage steelhead. These tribal and state divisions have been responsible for initiating the research and collecting the data necessary to measure catches, run sizes, escapements, fishing effort, inter- and intra-species interactions, age structure and hatchery/wild composition of runs, survival rates, growth and production, effects of environmental factors, effects of different hatchery strategies -- in sum, the information needed to manage steelhead effectively.[10]

Much more information must still be gathered, but it must be remembered that, far from having "a detrimental effect on the ability of the affected states to manage the species effectively", the Boldt Decision has vastly improved steelhead management.

Summary of Analysis of Justifications for Decommercialization

Contrary to assertions by proponents of decommercialization, the evidence indicates that on the Quillayute River System, commercial fishing has not had detrimental effects on conservation or on the local economy; that it has aided the ability to manage effectively; and that enforcement and monitoring of commercial fishing regulations is actually much better than sport fishing enforcement and monitoring. This means that the decommercialization legislation would probably not accomplish its stated purposes, with respect to the Quillayute River System.

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[10] It should be noted that on the Quillayute System, the information on changes during the course of the run in age, sex, size, and hatchery/wild composition, as well as information on in-season estimates of run size, are derived almost entirely from commercial gillnet catches. Thus, eliminating the gillnet fishery would severely hamper effective management.

ANALYSIS OF ARGUMENTS OPPOSING DECOMMERCIALIZATION

Opponents of steelhead decommercialization have argued that the bill 1) is racist; 2) will abrogate treaties; and, most importantly, 3) will have a shattering effect on the society and economy of tribes that depend on steelhead.

Racism

When asked whether decommercialization was a racial issue, a sportsman answered "Absolutely not. I myself happen to be of Mexican American descent, and [many Indians do not catch steelhead]."[11] Despite this assurance (and the ethnic origin of the sportsman) the U.S. Commission on Civil Rights declared that "the fishing rights issue, which is a property right, has racial dimensions."[12]

Furthermore, the June 29, hearings on decommercialization in Seattle were punctuated by a definite air of racial animosity and epithets such as "squaw" and "redskin".

While there may be racial animosity between Indians and sportsmen, does the legislation itself discriminate on the basis of race? The bill prohibits commercial fishing by one racial group - Indians. There are, however, non-Indian commercial steelhead fishermen.

The river guides on the Quillayute charge about $150 per trip. They are businessmen who earn an income by, essentially, selling fish to sportsmen, and there is therefore no reason why they should not be considered commercial fishermen. There are about a dozen guides on the Quillayute, and in a good day, when they can make 2 trips, they might "sell" from six to twelve fish to their clients. This is more steelhead than most tribal fishermen net in a day.

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[11] Anonymous. 1981. Future salmon, future steelhead. Trout magazine. 22(1) 33-35.

[12] Indian Tribes: A Continuing Quest for Survival. U.S. Commission on Civil Rights, June 1981. Pg. 69.

These commercial fishermen, all of whom are non-Indians, would not be restricted at all by the proposed legislation. Only Indian commercial fishermen would be affected. As this means that the proposed decommercialization would be applied selectively on the basis of race, it appears that the legislation, in addition to fueling racial animosity, is itself clearly racist.

Abrogation of Treaties

The image and credibility of America, both at home and abroad, would be damaged if the government were to abrogate Indian treaties. Furthermore, there are questions about whether abrogation is constitutional. It is therefore necessary to ask whether this legislation does abrogate treaties.

Although the federal court decisions have explicity stated that the treaties provide Indians with the right to fish commercially for steelhead, proponents of decommercialization have stated that the bills would not abrogate treaties, because the Indians would be compensated. This compensation would be provided either by: increased salmon catches; by income from licensing and providing guide services to sportsmen, or by filing in the Court of Claims. Each of these forms of compensation should be examined.

Increased salmon catches. Sportsmen and politicans who favor decommercialization have proposed that Indians replace their lost steelhead with increased catches of "the far more abundant" salmon resource. This similar to the Five Year Plan on the Columbia River, where the tribes promised to reduce their steelhead catch in return for increased chinook catches. In the Five Year Plan, the tribes did reduce their steelhead catch, from 29,000 to 3,000, but the states and federal government failed even to provide them the share of chinook they should have gotten even without the Five Year Plan, much less any increased share.[13]

The Quileute Tribe would oppose tradeoff of steelhead for salmon, because such a tradeoff would violate their treaty right to a continuous, year-round fishery. **The Quileute Tribe would never accept such a tradeoff.**

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[13] Statement of Columbia River Intertribal Fish Commission on Legislation to Decommercialize Steelhead, May 1981; Testimony of Joseph Meninick to Senate Select on Indian Affairs, Seattle, June 29, 1981.

Moreover, it would probably not be possible for the non-Indians to deliver on any promise to deliver increased salmon because the sports salmon fishermen have already gone on record as adamantly opposing it. The Washington State Sportsmen's Council has stated publicly, and to this Committee, that "we do not in any way endorse the exchanging or trading of the salmon species for the steelhead."[14]. If salmon were exchanged for steelhead, the impact on ocean salmon fishermen would be tremendous. To replace the 5,000-10,000 steelhead that the Quileutes catch each year, the ocean fishery would have to be completely eliminated, and that still wouldn't provide enough salmon to the tribes, nor deal with the problems relating to the need for a continuous, year-around fishery to sustain the tribal communities.

Obviously, non-Indians will not eliminate their ocean fishery. The proponents of decommercialization are not serious when they propose replacing steelhead with salmon, and they know it. In spite of their public statements favoring a tradeoff, there isn't one word in the legislation that mentions anything about providing more salmon to affected tribes. The situation is somewhat akin to having a salesman tell you to pay now for something, without being told what you're buying, how much you're buying, when it will be delivered, or even if it will be delivered.

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14. Testimony of Robert J. Skanes to Senate Select Committee on Indian Affairs, Hearing at Seattle, Washington, June 29, 1981.

Would you buy something under terms like that? That's what the tribes are being asked to do.

License Fees and Guide Services. The bill states, in Section 2, (6), that "The right to license sportsmen to fish for steelhead trout on Indian lands may well be more valuable to Indian tribes than is a commercial fishery for steelhead trout." Presumably, this bill would entitle tribes to provide on-reservation guide services for sportsmen, and the income derived from this enterprise would more than replace any income lost through steelhead decommercialization.

This provision demonstrates a distressing lack of knowledge about the laws relating to on-reservation fishing. A little bit of research would have shown that tribes already have the right to license and guide sportsmen on-reservation and that this provision therefore gives them nothing.

Quileute Tribal Ordinance 74-A5, which has been approved as law by the Secretary of the Interior, provides that "A sport fishery on reservation by non-members may be authorized by the Council by appropriate regulations". These regulations require sportsmen who want to fish on the Quileute Reservation, to buy a license from the Tribal Council. Few sportsmen have ever done this, and why would they? The reservation covers about a mile of river at its mouth. This section is in tidal reaches, where steelhead don't bite, and lacks the glides and pools where they do bite. Why would any sportsman even want to spend extra money to fish on reservation, when he can use his state license to fish at much better places anywhere along over a hundred miles of the Quillayute System?

If this is the compensation that is supposed to reimburse the tribes for their lost steelhead, then it's clear that this provision has not been very well thought out.

Court of Claims. The bill provides (Section 6) that if a tribe feels that the compensation it would receive from licensing and guiding sportsmen is insufficient, it may file a claim for additional compensation, but only in the Court of Claims.

This court is located in Washington, D.C., far from the localities most affected by this legislation, and it can only award money damages - it can't return stolen property. Why would the bill's authors require that all claims be heard in the Court of Claims, from which there is no acceptable remedy, instead of in the District Court that has continuing jurisdiction over treaty fishing rights litigation and which will necessarily hear the Constitutional challenge to this litigation: And, do the bill's authors think the tribes are going to just "disappear" during the twenty or more years of appeals on the issues of Constitutionality and valuation of the treaty rights taken?

To an Indian, treaty fishing rights are rights on the same level as the rights of freedom of religion and free speech. Thousands of Americans have paid for these rights with their lives. For how much would you sell your rights to freedom of religion and free speech? Could you even put a monetary value on your rights, and do you believe that the Court of Claims would compensate you adequately?

When considering monetary compensation, it is illustrative to remember what one of this bill's Senate co-sponsors, Henry Jackson (D-Wash) said about another compensation proposal for a government taking of rights[15]: "I question seriously whether you can provide for a monetary settlement of a problem that goes beyond that kind of solution... It would be a tragedy if you came up with a figure that Congress could not appropriate."[16] In other words, even a co-sponsor of decommercialization bill believes that monetary compensation is inadequate for the taking of some rights, and, he doubts that any compensation will be paid.

Summary of Compensation Proposals. Proponents of decommercialization claim that decommercialization will not abrogate treaties, because compensation will

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15. This compensation proposal dealt with redress for the Nikkei who were incarcerated during World War II.
16. Quoted from Abe, F. "What price injustice?" Seattle Post-Intelligencer. Sept. 6, 1981. Pg. B3

be provided. Even if compensation were acceptable to the tribes, the forms of compensation proposed reveal that there is no intention to give the tribes anything for taking away their steelhead fishing rights.

It is not feasible or possible to replace steelhead with salmon, and there are no provisions in the bills to require that; tribes are already entitled to the income derived by licensing and guiding sportsmen, and would gain nothing through this provision: and the Court of Claims is unlikely to award meaningful compensation, a fact well known to the bills' authors. Furthermore, a co-sponsor of these bills admits that Congress is not in a compensation-providing mood.

Economic and Social Effect on the Tribe

This report will examine only superficially the magnitude of the economic and social effects decommercialization would have on the Quileute Tribe.

For the Quileute Tribe as a whole, steelhead provide from one-quarter to one-half of the fishing income. For individual fishermen, however, who may have grounds that are fishable only in the fall and winter, steelhead may provide over half of their family's already-meager income. Obviously, removing this source of income can have a severe economic impact.

During this last winter, when the tribe fished only 11 days between October 10 and May 3 (a period of nearly 7 months), it was forcefully demonstrated just how severe are the economic impacts of not fishing. Tribal members were threatened with eviction from their homes; gas and electricity, which are vital for heating and cooking during the winter, were sometimes cut off; tribal members couldn't pay transportation costs, which made it difficult to travel the 15 miles to the nearest town and hospital; members had to use Food Stamps, but had difficulty buying them; and school children went without school supplies. In addition to these direct impacts, having the breadwinner out of work caused frustration, alcoholism, child and spouse abuse, and family breakups.

Severe as these impacts were, the cultrual and spiritual impacts were even more severe. It is difficult for non-Indians to grasp the cultural and social significance of the traditional fishery. The following description, written by a non-Indian, may help to explain it:

> And salmon[17] remains. The river, the boat - whether skiff or canoe with outboard added - the fishing gear, continue to be the familar setting of life... salmon is still near the center of daily living.
>
> Above all, attitudes survive. What finally remains is the set of mind, the frame of reference, the outlook. The details just described are perceived differently by Indian and white...
>
> Moreover, the Indians' view of life was, and is, oriented toward the group, as an organic, all-embracing body. A person's identity as a part of the group is part of his individuality... In general, such group orientation and group identification is foreign to non-Indian American society, and is virtually unintelligible in it...
>
> It is as an aspect of the group that fishing takes on its significance, for fishing is part of the life of the group, and so is part of what and who a person is. With the disappearance of the old languages and of many practicies and beliefs, and with increasing use of goods from the non-Indian world, Indian fishing remains a solid point of identification.
>
> Non-Indians have been almost completely blind to the place of fishing in the Indians' conception of themselves. Though it has been anthropologically recognized and described, the fact that fish could be so intertwined with life has never actually been felt by non-Indians;

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[17] To the Quileute, salmon includes all the fish known as various species of salmon and steelhead.

> the idea of fishing as the essence of the group, and so of a person's own essence, is hardly comprehensible...
>
> Fish, particularly salmon, still are an integral part of Indian life. As some other aspects of that life have disappeared, the role of fish and fishing has assumed even more importance - both economic and symbolic, and the symbolic may well be more significant than the economic. They still represent meanings and relationships so old and tenacious that even Indians who no longer fish will fight to preserve the accustomed rights in the rivers and streams with which they are traditionally connected. Fishing is the heritage of hundreds of years of use and development. It is a stronghold of the Indian person's sense of identity as an Indian. It is a remaining avenue of close relationship with the natural world, it is at the heart of his cry for recognition and respect.[18]

From this passage, it is apparent that the value of steelhead fishing is much more than simply the money received for selling a fish. Steelhead fishing is a cherished right, and as asked previously, how can a monetary value be put on a right? Furthermore, it's not possible to give up only part of a right without losing the right entirely. Though the legislation may not affect Indians' salmon fishing, their right is to a traditional, continuous, year-round fishery, not to a fishery for only a part of that year.

Non-Indians have difficulty understanding that the traditional fishery must be continuous. One sportsman said "I think an Indian can exercise his right to the steelhead by going down to the river once a year and exercising that right."[19] That is a contradiction of terms. A right is not a right if it can only be exercised once each year. Would that sportsman feel that his religious rights would be satisfied if he could only exercise them once each year?

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18. Hanson, W.L. 1975, in Uncommon Controversy, University of Washington Press. Seattle. Pgs 68-71.
19. Supra fn 10, pg 35. Emphasis supplied.

At the root of the steelhead controversy is an attitude,held by some, that an Indian should be content just to sit around for several months each year and draw unemployment. Most non-Indians would consider that demeaning to their self-respect, their integrity, their sense of self-worth. Why, then, do they think that an Indian should be content to do that? The answer appears to be simple: blatant racism. The underlying belief behind this attitude is that Indians just don't have as much self-respect, integrity, or sense of self-worth as non-Indians, and are therefore just not as good as non-Indians. The corollary is that Indians therefore don't have the same right to life, liberty, and the pursuit of happiness: thus, their treaty rights can be taken away with impunity.

An Indian has just as much self-respect, integrity, and sense of self-worth as a non-Indian. He also wants to support his family through his own work - he is not satisfied with accepting handouts when he can work, any more than a non-Indian would be, yet decommercialization would require forced unemployment for several months each year.

True, there are also non-Indian fishermen whose fisheries get closed for several months each year. For these fishermen, however, fishing is only a privilege. The key difference is that Indian fishermen are the only party with treaty-guaranteed rights to a traditional, continuous fishery. And it is not possible to equate a privilege with a right.

Summary of Analysis of Arguments Opposing Decommercialization

Despite denials by proponents, it seems clear that the proposed legislation 1) promotes racial hatred and discriminates on the basis of race; 2) abrogates treaties without providing compensation; and 3) will have a severe economic impact on several tribes, including the Quileutes, but an even more severe impact on their cultural and spiritual lives.

MYTHS AND CHARGES

Proponents of decommercialization have made a number of inaccurate statements that should not go unchallenged. This section responds briefly to some of those statements.

1. The Sol Duc fisherman who catches everything.

Despite Judge Boldt's finding that the opposite was true (Pg 2, supra), charges are still made that the Indians are responsible for any decline in the runs. For example, a sportsman made this statement:

> On the Sol Duc River ["Sol Duc" is an alternate spelling of "Soleduck", a tributary to the Quillayute] on the Olympic Peninsula, for example, we attribute the loss of a large part of the native run of large steelhead into that system to one net belonging to one individual. That individual has set up his net at a particular location at the mouth of the river in such a way that he has the capability of taking 100% of the run if he so chooses. At this point he has chosen to harvest 90%.[20]

This statement is presented as accepted fact. It appears, however, to be a complete fabrication.

First of all, Tribal regulations[21] prohibit Indians from fishing the Sol Duc. No Indian even has this mythical ground at the mouth of the river. If an "individual" has been setting a net there, he's probably a non-Indian.

Secondly, Tribal regulations state that gill nets can extend no further than 1/3 of the way across the river channel. This would make it very difficult to take 100% of the run at any location.

Finally, and most convincingly, the catch data totally refutes this allegation. In the past 4 years, the only years for which we have run size estimates, the total tribal catch has always been less than half the run, and much less than half of the native run (Table 2). Obviously, this would be impossible if one member alone were taking 90% of the run. Furthermore, if one member were taking 90% of the run, then he would also have at least 90% of the tribal catch. No such person exists. There are fishermen who do better than others, but the catch is much more equitably distributed. On an average day during steelhead season, the person with the highest catch (and it's not the same person each day) might account for a maximum of 10 to 20% of the catch.

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[20] Trout Magazine, 22(1), at p. 34, "Future Salmon, Future Steelhead".

[21] Quileute Tribal Ordinance 74-A5

Apparently, there is no such person as the "individual" who takes 90% of the Sol Duc fish. There aren't even rumors about such a person existing. The origin of this statement is unknown, but it seems to have been created entirely by the sportsman who made it. The tragedy is that once a statement is made, there will always be some who believe it.

2. Sportsmen pay all costs of management and enhancement with their license fees.

This is a commonly held belief, and sportsmen use it to justify saying that they should have all the steelhead. Recent program cuts, however, have raised questions about the validity of this belief.

This year, six of the ten workers in WDG's steelhead management program were laid off, aerial surveys were eliminated, and hatchery operations and research projects were cut back. The reason? A reduction in federal funding.

If sportsmen pay all the costs of steelhead management and enhancement, then why would a reduction in federal funding have any effect on the steelhead program? Obviously, a very significant portion of the steelhead program costs are paid by the federal government, and sports fishermen don't pay anywhere near as much of the costs as they have been led to believe.

3. It costs the state more to manage and regulate Indian commercial steelhead fishing, than the Indians earn from selling steelhead.

How can the state be spending any money to manage or regulate Indian fishing?

In U.S. vs. Washington (384 F. Supp.), the federal court ruled that the state has no authority to manage or regulate Indian fishing, except in crisis conditions. The state should not, therefore, be spending money to do this. If they are, then I, as a taxpayer demand an investigation.

Actually, most of the money supposedly being spent to manage the commercial fishery is really being spent to manage and regulate sport fisheries on rivers where commercial fisheries also exist. Because this management is necessary to meet the treaty:non-treaty sharing requirement, WDG has called this the "Treaty Indian Program", which gives the impression that the money is used on Treaty fisheries. In fact, the Treaty Indian Program money is being used largely to manage sport fisheries in the Boldt Case Area. If all sport fisheries in the state had to be managed as closely as those in the Boldt Case Area (and, for the good of the resource, they really should be managed even more closely), then management costs would be much higher. It therefore seems that it is really the sport fisheries that don't pay for themselves. Sports fishing, like other forms of recreation, is most heavily subsidized by the contributions of all U.S. citizens.

4. Sports angling, by its nature, cannot overfish a run.

This belief is propagated by sportsmen who want to see netting prohibited, for "conservation", but don't want any restrictions put on their angling. A sportsman explained that "In order for an angler to catch one fish out of a hole, there have to be three fish. A sportsman is not capable of catching 100% of the resource".[22] This sportsman did not document any evidence to show that there really must be three fish present before one can be caught, but even if this is accepted, it means that if 100 fish enter a hole, anglers can catch 98%, and then there's only a 50% chance of there being one male and one female. True, they didn't catch 100%, but 98% exploitation also constitutes overfishing in most cases.

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[22] Trout Magazine, 22(1), at p. 34, "Future Salmon, Future Steelhead".

Anglers are capable of quite high exploitation rates. The WDG estimated that the sports exploitation rate on Quillayute hatchery summer steelhead is 80%[23], and summer angler effort is much lower than it is during the winter. On most wild runs, an 80% exploitation rate would constitute overfishing. Furthermore, it is widely known that heavy angler pressure can, in a few days, fish out almost all the trout planted in a lake or river, and that ocean angling (troll and sports fishing) has overexploited many salmon runs.

In spite of these facts, some anglers still claim that their fishery is self-regulating -- that as abundance declines, so will angler interest, and escapement will stay constant.[24] On the Quillayute System, it would be dangerous to rely very heavily on this theory. The Quillayute is remote from population centers, and spur-of-the-moment day trips are not possible for the city folk. Sportsmen make reservations and plan their vacations weeks or months in advance. Since the hatchery run enters first, a good hatchery run can encourage more sportsmen to make reservations for later in the season. Then, even if the later native run is poor, sportsmen would be unlikely to change vacation plans that had been made weeks or months in advance. Furthermore, sport catch reporting is usually several weeks behind, so even if the fishing turns sour later in the season, it will take awhile before out-of-area anglers find out about it.

For these reasons, it appears that sports angling is every bit as capable of overfishing a run as is netting. Both must be managed and monitored, and although the net fisheries are very closely monitored, it is unfortunately true tha the sport fisheries are not.

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[23] J. Nielson, WDG Regional Biologist, pers. comm.

[24] Royal, L. A. 1972. An examination of the anadromous trout program of the Washington State Game Department. 176 p.

5. The extinct species analogy.

In his testimony before the Select Committee on Indian Affairs on June 29 in Seattle, Jerry Pavletich, National Director of Trout Unlimited, stated:

> If the commercial harvest of Steelhead Trout is allowed to continue in the Pacific Northwest and the Great Lakes, then no creature is safe from commercial harvest and possible extinction . . . We only have to remember the American Bison . . . the Carolina Parrott . . . the Passenger Pigeon.

The irony of Mr. Pavletich's statement is that the Indians had lived for centuries in harmony with the Bison, the Carolina Parrot, and the Passenger Pigeon. It was the non-Indian immigrants who slaughtered these animals to extinction or near-extinction.

Similarly, on the Quillayute System, Indians have lived for centuries in harmony with the steelhead. It is the non-Indian sports fishery that is catching most of the native runs; it is the non-Indian sports fishery that is not monitored, not regulated, and not managed; it is the non-Indian sports fishery whose management and enforcement costs could drain the public treasury.

If any fishery must be prohibited, it would therefore seem more reasonable to prohibit the non-Indian sport fishery. With this in mind (and with tongue in cheek), the Quileute Tribal Council has adopted the resolution on the following page:

TELEPHONE 206-374-6163

QUILEUTE TRIBAL COUNCIL

POST OFFICE BOX 279
LA PUSH, WASHINGTON 98350

RESOLUTION OF THE QUILEUTE TRIBAL COUNCIL

LA PUSH

RESOLUTION NO.# 81-A-66

WHEREAS, The Quileute Indian Tribe organized under the Indian Reorganization Act of June 18, 1934, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Tribe approved by the Secretary of the Interior on Novermer 11, 1936, and;

WHEREAS, Indian tribes in the Northwest have fished and commercially traded steelhead for centuries, with no detrimental impact on the steelhead runs, and;

WHEREAS, In mid-19th Century, tribes signed treaties that allowed non-Indians to share in the steelhead harvest, and;

WHEREAS, State legislative action in the 1920's and 1930's declared steelhead a "game fish", thereby encouraging nearby unrestricted recreational fishing, and;

WHREAS, By the 1960's this unrestricted recreational fishery had caused a noticeable decline in native steelhead runs, and;

WHEREAS, The enforcement of regulations and monitoring of the recreational fishery continues to be so inadequate as to make it nearly a joke, and;

WHEREAS, Recreational fishermen have no more cultural tie with steelhead than they have with catfish, bass, or muskie, while steelhead is at the cultural and spiritual center of Indian life, and;

WHEREAS, Steelhead fishing is a winter occupation for the tribe and assures the continued existance of the tribe as a fishing society, and;

WHEREAS, Income derived from commercial steelhead fishing, feeds, clothes, and supports the families of fishermen and the community where they live and provides income to buyers, distributors, processors, and retailers across the nation and in foreign countries, while the value of recreationally caught steelhead is only a brief thrill for the sportsman, a minimal license fee, and some money put into a very localized area; therefore, the commercial value of steelhead is much higher than its recreational value, and;

Quileute Tribal Council
Resolution No.________
Continued --- Page two (2)

WHEREAS, The tax money to support steelhead enhancement programs comes largely from federal sources, for which the base is largely the lands that Indians granted to the government by treaties, and;

WHEREAS, Sportsmen can be fully compensated for any losses caused by steelhead derecreationalization by increasing their catches of the far more abundant hake and anchovy resources, and by acting as guides for Indian commercial fishermen in newly-opened commercial off-reservation fishing areas that are not part of usual and accustomed areas, and;

NOW THEREFORE, LET IT BE RESOLVED, THAT, Congress introduce legislation that derecreationalizes (prohibits recreational harvest of) steelhead, and;

BE IT FURTHER RESOLVED, THAT If a sportsman feels that he has suffered any losses under this legislation, he may file in Small Claims Court, and any compensation granted must be reduced by the value of the opportunity to provide guide services to Indian commercial fishermen, and;

BE IT FURTHER RESOLVED, THAT The title of the steelhead derecreationalization legislation shall be "The Steelhead Trout True Protection Act".

Russell Woodruff Sr.
Russell Woodruff, Sr., Chairman
Quileute Tribal Council

C E R T I F I C A T I O N

I, the undersigned, hereby certify that the above Resolution was adopted at a special /'regular' meeting of the Quileute Tribal Council at La Push on the 25 day of June, 1981, by a vote of 2 FOR and 1 AGAINST.

Authorized Representative
Quileute Tribal Council

ATTACHMENT TO STATEMENT OF CHRIS E. MORGANROTH, DIRECTOR OF FISHERIES, QUILEUTE TRIBE

Plaintiff U.S. (Quileute Tribe) vs Defendant Moore (WDF)
Civil Docket NO. 554, Tacoma, Washington.

Tribal suit over State claims of ownership of Quillayute River and tidelands.

District Court Decision was: The riverbed of the Quillayute River and the tidelands of the Pacific Ocean, where the same border upon and are adjacent to the uplands described in the Executive Order of February 19, 1889 are part of the Quileute Indian Reservation as established by said Executive Order. Relief sought by Plaintiff granted. Judge Charles Leavy. September 26, 1945.

State appealed this. Ninth Circuit Court of Appeals. Decision upheld, November 20, 1945.

Tribe brought suit due to loss of income from having to comply with State game and fish regulations. Income went from $20,000 to $7,000 per year.

Plaintiff U.S. (Quileute Tribe) vs Defendant Taylor (private citizen)

In 1929 Taylor was conducting a commercial enterprise in the Quillayute River (fish buyer, gas dock). The Tribe sought to establish jurisdiction and control (B & O tax?) over the River and tidelands. The Tribe claimed estuary and river. The Tribe won. (U.S. vs Taylor, 33 Fed. 2nd 808).

Taylor appealed and resulted in reversal. The Court decided that the State controlled estuary and river where it touches the Reservation, (Taylor vs U.S. 44 Fed. 2nd 531) on the grounds that the State was established before the Reservation (which is incorrect: the Reservation was established two days before the State).

The Taylor case could not be used in the Moore case because of the erroneous decision. Also Taylor was a private individual not a public representative; therefore, was a different defendant.

The Reservation was created on February 19, 1889. The State was created February 22, 1889 and admitted to the Union November 11, 1889.

Plaintiff Quileute Indians vs B.F. McCauley (WDG Director)

The Tribe was seeking an injunction against the State Game Wardens and Fisheries Patrol Officers because of interference with Indian fishing in usual and accustomed areas. Preliminary injunction granted May 5, 1941 in U.S. District Court.

There was an attempted arrest by the State in 1943 of Christopher Morganroth. In October/November 1942 he was fishing off reservation. The case was dropped after further investigation (probably due to McCauly Case), but it took over a year and involved several false statements by the arresting officer (E.B. Benn) about where the arrest took place, when it was made, and whether Chris was set or drift netting. Tribal police refused to turn him in, and finally the BIA asked for Chris' side and got the case dropped.

Senator COHEN. At the conclusion of this panel, we will recess until about 2 o'clock and then the other groups will testify, so, I do not think it will be necessary for you to go over the tables.

Mr. MORGANROTH. I did not mean to read the entire pages, but I will conclude now and let Ms. Leitka go ahead.

Senator COHEN. Ms. Leitka?

STATEMENT OF MARY K. LEITKA, CHAIRWOMAN, HOH INDIAN TRIBE

Ms. LEITKA. Thank you, Mr. Chairman.

I am Mary Leitka. I am the chairperson of the Hoh Indian Tribe.

I would like to submit my statement that I have for the record and give my point of view.

Senator COHEN. Without objection, your testimony will be placed in the record following your oral testimony.

Ms. LEITKA. I do not think anyone from here understands our living on the reservation. Although we are a small tribe, I think that our way of living will go on until we cannot continue to fight anymore for what we have.

The issue before the Senate now on the steelhead relates to our way of living. We depend on the steelhead run. We fish the winter steelhead. We have no other way of living. Our reservation is so remote that none of the members will go forth and leave the reservation. Even if they do, they do not find anything out in the outside world and they want to come back to the reservation.

They grew up as fishermen. It is going to be their livelihood for the rest of their years. Their children are raised as fishermen, from when they are young until they grow up.

You cannot tell your elders that this is the time you are going to fish for your ceremonial needs. You have something that happens on a reservation. You cannot sit down and say that a long time ago you used to fish like this for your ceremonial use and now you cannot.

You are told when to fish and when to have your own ceremonial use time, which is wrong.

Our treaty rights and the comments that have been made are not understood by the elders of the reservation. They do not understand Mr. Gorton's comment on the treaty rights. They do not understand this in the way of saying we can take your fish away from you.

They still go back to the years when the treaty rights were signed and have said that they can fish in their usual and accustomed grounds.

Even if the tribes cut back on their fishing, which our tribe could go clear up to the Hoh River Bridge—and we do not always abide by that—we cut back on a lot of our fishing for the use of allowing sports catch also.

As to the other share of fish that was mentioned by Mr. Gorton, our livelihood is founded on this other source of fish. That is a misinterpretation.

We have had problems with the mismanagement. We have been closed for a good number of years. Now we have to fight in order for us to stay alive.

I do not see anywhere in this bill that it is going to help our tribe to survive any longer. We do live right next to the river. I think that the enhancement program on the whole is important to our tribe. We do have a hatchery, even if it is small. We do work with the steelhead fish. This is our wild stock.

As to the people of the Hoh, they work with the biologists to get these things. The data is collected by the Hoh. It is one of the best that we have ever had.

We use that not only to go to FAB [Fisheries Advisory Board] meetings, but we have it for our own use.

As for the enforcement on the reservation and off, I see a comment which says that the tribes are not trying to work with them.

We have been asking the game department if we could have our officer cross-deputized, seeing that our river is the lower reservation, that is, the lower part of the river.

We see things and we submit them to the State. Sometimes they say it is lost in the shuffle. That happens a lot of times.

We hear about them doing the best they can to help us to be cross-deputized, but this does not work either. All we get is assurance that they are trying.

So let me say in concluding, that never have I been happy to come back here to testify for something, but to have to testify for a bill like this, that is, looking to put my tribe, small as we are, into something that is not going to be working for us, is bad.

Our way of life and our livelihood has to continue, so far as I am concerned.

[The prepared statement follows. Testimony resumes on p. 144.]

PREPARED STATEMENT OF MARY K. LEITKA, CHAIRWOMAN, HOH INDIAN TRIBE

Mr. Chairman, members of the Committee: My name is Mary K. Leitka. I am the chairperson of the Hoh Indian Tribe. I appreciate the opportunity to testify here today on the Steelhead Trout protection bill because it would have such a severe effect on the Hoh Indian Tribe. It seems as though every year we must come back to Washington, D.C. to address legislation that affects our treaty fishing rights in some way.

We are really disappointed to have to testify once again on a bill that proposes to abrogate our treaty rights to steelhead, the fish that supports the tribal life through the winter season every year, because sport fishing interests think they should be the only ones to use this fish. This bill would "decommercialize" steelhead by putting our fisheries under state regulation, it would hurt both the Tribe and steelhead resource, because the state does not manage the Hoh steelhead run. We oppose this legislation because it would create such a severe hardship on the Tribe and because we think the sport fisheries are helped, not hurt, when we exercise our treaty fishing rights and manage the steelhead runs to preserve them for our harvest, and for them, for the future.

It is really frustrating to be involved in fisheries, or to be a fishing tribe, because no matter how many times we win in the federal courts, the politicians and the special interests always try to reopen the case and overturn the law. After the Supreme Court told the State of Washington it had to recognize and comply with our fishing rights for steelhead as well as for salmon in 1979, we thought the state and the nonIndian fishing groups would listen, and would start to cooperate with us. Instead, once again, they want to take away our rights because some of the more vocal sport fishermen, private citizens, want steelhead exclusively for their recreation, for their personal enjoyment.

The truth is that the steelhead in the Hoh River are best protected by the Hoh Tribe because we live on the river, we watch and take care of that fish from year to year and from generation to generation. We know that if we do not take care of it our way of life will be destroyed. So, unlike the state which doesn't really care whether sportsmen catch steelhead in our river or in some other river, we must properly manage that resource.

From long before the time the treaty was signed we have relied on the salmon and steelhead returning to our river cycles, all year around, and on the shellfish from our ocean beaches, to support our way of life. When the Treaty of Olympia was negotiated with us and with other coastal tribes in 1855, we agreed to it because it guaranteed that we would always be able to continue living this way. The United States recognized that we were self sufficient because our fisheries supported our economy and daily lives, and agreed that the treaty should assure these rights for us.

It would be difficult to find a situation that more simply and plainly demonstrates the reasons for the treaty right than you would see if you came to our Reservation. The Reservation is situated at the mouth of the Hoh River along the north coast of Washington. It is north of the Quinault Reservation and south of the Quileute Reservation, and is more than twenty miles from the nearest town of Forks, Washington. Although many people come to the Hoh Valley in the summer, especially to see the rain forest and to hike, and sport fishermen come to the river in the winter to fish, few people live along the river and most of it is park and timberland. The Tribe's fisheries take place right on the Hoh River, in the lower miles near the mouth. We depend on each one of the salmon and steelhead runs that return to the Hoh River to support the Tribe's way of life around the year, and we have taken good care of these resources because the Tribe has no where else to go, no other resource to turn to, and no other way of life.

The Hoh River has traditionally supported good Tribal fisheries on four salmon runs—spring, summer and fall chinook and fall coho—as well as on winter steelhead. The consecutive timing of these runs supports a year around tribal fishery and allows us to survive as a fishing society. None of our runs is very large, however, and the loss of any part of our traditional fishery during any season of the year makes life very difficult for us. For example, in the last two years our chinook and coho runs have been very poor because of state and federal ocean management policies, and we were almost constantly closed for conservation of these runs. Since we couldn't fish and we don't have any other resource or industry, many tribal members were simply unable to afford electricity, telephone, school supplies and new clothes for the kids, and other things most people consider necessities. During those years the steelhead run was the only one we could rely upon. It provided about ninety percent of our Tribal income and made it possible for us to continue living on our Reservation. The decommercialization of steelhead would take away this crucial fishery that gets us through the months from November to April of each year.

The whole Tribe is involved in our fishery, because it is our way of life. From our elders down to our small children, you will see everyone participating in the fishery—catching fish, smoking, canning, trading and selling the fish, everything necessary to support us. The catch is also taxed by the Tribe to help support the Tribe's fishery management and enhancement program. Most of the fishing is done by gillnets, either set from the bank of the river or fished by one of our fishermen in a river skiff, drifting down the river. The men usually conduct these fisheries, but sometimes the women do as well. All the Tribal members, young and old, get involved in the pole net fishery. This fishery uses a gillnet fixed onto a set of long poles, and guided down the bank at the very mouth of the river by a Tribal fisherman. Sometimes you can find nearly everyone in the Tribe, including whole families, down at the mouth of the river carrying out these fisheries. Other times, just a few people will be out pole net fishing to go fish for ceremonials or for religious needs of our people. The real importance of fishing to the Hoh Tribe is that it means we can continue being Hoh Indians, and the steelhead fishery guarantees that we can continue existing on the Hoh River as a fishing society. It is this very right to continue being a fishing Tribe that is threatened by the proposed bill.

The Hoh Tribe has a strong fishery management program because our existence depends upon the fish resources. Tribal members who do not fish usually work with the Tribe's fishery management program in some way. We have a professional biologist, but many of the Tribal fishermen also work for the fishery management program as fishery technicians, donating their time and equipment to collect native broodstock for enhancement, to walk the spawning grounds, and to help in other research and field work the Tribe does to collect data on each of our runs. One of our Tribal members is also trained as a fishery technician through one of the state's community college programs. All members of the Tribal Council are involved in the fisheries because of the many meetings, hearings, inter-agency planning sessions and other work involved in the implementation of the *U.S. v. Washington* management orders and the Salmon and Steelhead Enhancement Act. We are also involved now in the development of a court-ordered long term plan for managing the coastal stocks that are involved in both Tribal and ocean fisheries, and instate sport fisheries.

The Hoh Tribe has a well-rounded management program for each of the four salmon and winter steelhead runs. But we have gone further in some respects with our steelhead program, both because of its importance to us and because the Department of Game really has never attempted to develop the data base necessary to proper management of the Hoh River's run. In addition to carrying out the basic requirements of *U.S. v. Washington* to reach agreement with the state agencies on preseason run size estimates for each run, on escapement goals, and on in-season management models, the Tribe has carried the entire burden of developing a hard data base for the Hoh River's steelhead run. The Tribe's fishery management activities for steelhead include the following:

1. Establishment of preseason run size estimates for the steelhead run through agreement with the Washington Department of Game.

These estimates are very rough, however, because the Washington Department of Game bases its estimate on a formula that uses the jack returns to Chambers Creek, a Puget Sound hatchery, to derive a forecast for the adult returns to the Hoh River, on The Washington Coast, for our naturally spawning runs. The Tribe believes that the hard data it is collecting now will allow us to develop more precise estimates in the future.

2. Development of an inseason run size model to analyze catch and fishing effort during the season to more precisely estimate the number of adult steelhead returning to the Hoh River.

The Tribe has excellent historic tribal catch data, going back several decades. Because the preseason run size estimates are rarely accurate, the Tribe uses this method to assure that sportsmen and the Tribe each have the opportunity to catch 50 percent of the harvestable steelhead actually returning to the river, and to assure the spawning goal is met.

3. Monitoring all tribal catch, whether it is used for commercial, ceremonial or subsistence purposes, recording the fish catch, the number of fishermen and nets. This data base provides us with critical information to monitor the size and timing of the runs from year to year, and to establish proper escapement goals.

4. Sampling the catch to determine the size, age and origin of steelhead (whether hatchery-introduced or wild fish) for each segment of the Hoh River's runs.

5. Conducting spawning ground surveys to determine the number of fish which made it to spawn, and to identify the areas of the river and the extent they are utilized for spawning. Spawning surveys are conducted by walking the streams, by boat and by aerial surveys.

6. Estimation of total run sizes, using a compilation of tribal catch, spawning survey information, and the sport catches reported by the Game Department, to determine the atcual strength of the run from year to year.

7. Development of escapement goals for the Hoh steelhead run, based on the above information and using a spawner-recruit relation model developed from the actual data collected from the Hoh River steelhead run.

8. Establishment and enforcement of tribal regulations that allow the Tribe to catch its share of the steelhead run, provide the sportsmen the opportunity to catch their share of the run, and assure that the conservation requirements of the resource will be met.

Because the Tribe carries out such a complete steelhead management program and because it must comply with the requirements of the court orders to provide sportsmen their opportunity to catch half the steelhead run, it is virtually impossible for the Tribe to overfish the run. Nevertheless, the Tribe's job would have been easier if the state Game Department was also interested in managing the Hoh River's steelhead run. But the Game Department does little to "manage" the sport fisheries they allow on the river. Their main management activities have consisted of planting Chambers Creek hatchery smolts that return during the early part of the run, and compiling catch records at the end of the season. They make their pre-season run size estimates, monitor the Tribe's catches (because the Tribe reports all its catches on tickets that are provided to the Game Department), and after the steelhead season ends, they make an estimate of sport catch based on whatever steelhead "punchcards" are voluntarily turned in by sportsmen. Except for one year, 1979–1980, the Game Department has not conducted a creel census to get an accurate estimate of steelhead catch on the Hoh River. The Game Department also has only one law enforcement officer to enforce the state regulations on all the coastal rivers north of Queets, so there is no state enforcement on the whole river. Because the Game Department lacks funding for management of the native runs, it has never participated in spawning ground surveys or other research activities required for proper management of the wild steelhead runs. Without the Tribe's commercial catch records, and the other data and research which we regularly provide them, the Game Department would have no specific information whatever on the steelhead runs that are produced in the Hoh River.

The Hoh Tribe has also established a close and very cooperative relationship with the local chapters of steelhead sport fishing organizations. This relationship was developed in large part because the local steelhead groups recognize that the Tribe is managing the Hoh River to protect and enhance the wild steelhead runs that produce the big fish that are so popular with the sportsmen. The Tribe established a wild fish enhancement program, enlisting the cooperation and assistance of the sports groups to catch steelhead from different segments of the run and provide them to the Tribe for broodstock. The Tribe holds the fish in its pond, and then spawns them, rears the young fish with the cooperation of the Quinalt National Fish Hatcherly, and then outplants them back into the river. This has been a very successful program, in large part because of the interest of the sports groups in wild fish enhancement, and their dislike for the Game Department's practice of planting the smaller, weaker Chamber Creek hatchery fish into the various Western Washington river systems.

Despite these efforts, the sports fishery on the Hoh River does not catch its full 50-percent share of steelhead in most years. This is not surprising, however, considering the great distance to the Hoh from major population centers where many of the sportsmen live, and the often unpleasant weather conditions on the River during much of the sport fishing season. The Hoh is subject to high water and flooding during the winter months, and it is frequently considered "unsuitable" for sport fishing because of murky or high water conditions. But the sportsmen nevertheless have the opportunity to catch their share. The Tribe's fishery during the best part of the sport fishing season is generally limited to just a few days a week, and it does not interfere with the sport fishery. Overall, Hoh River sport catches on record have been relatively stable from year to year, since the late 1940's when we began to see data. Although the sport fishery did not catch its full 50-percent share of the last year run, sportsmen caught 1,943 steelhead—more than in any year since 1972. The fish they were entitled to catch, but didn't, made it to the spawning grounds to produce one of the two highest spawning escapements ever recorded for our steelhead run.

There are so many really positive things happening to the steelhead resource because we are exercising our rights to fish for steelhead, and protecting that run. The progress the Hoh Tribe has made in bringing steelhead management out of the dark ages, by keeping accurate daily catch records, developing data and conducting research on the wild runs, would be stopped by the enactment of this legislation. And it is really unlikely that the state would take over the management responsibilities we have been carrying out because their steelhead management program is not big enough to do it, and the state's budget problems will keep it from growing. Also, the Tribe's commercial catch records are an essential part of the data base to determine run size from year to year, and this would be entirely lost. Even without the Tribe fishing, sportsmen would still be limited by weather conditions, water conditions, and distance of the Hoh River from any big towns.

Most importantly, the Hoh Tribe is a fishing society, and our traditional steelhead fisheries are essential to the ability of the Tribe to continue its way of life. After signing the treaties and after the federal courts have ruled so strongly in our favor, and looking at the positive benefits our treaty right fishery brings to the resource and the sportsmen, the Hoh Tribe hopes that you will reject this bill and not consider any more bills that would take away our treaty fishing rights.

Senator COHEN. Mr. Kalama?

STATEMENT OF GEORGE M. KALAMA, CHAIRMAN, NISQUALLY INDIAN TRIBE

Mr. KALAMA. Thank you, Mr. Chairman.

I would like to submit my prepared statement for the record.

Senator COHEN. Without objection, your testimony, in its entirety, will be placed in the record following your oral testimony.

Mr. KALAMA. I am here to testify against Senate bill 874. I did not come here as a Republican nor as a Democrat, but I am here as a Nisqually Indian, one of the members of a proud race of people.

Some of my concerns here are that the proposed Steelhead Trout Protection Act is a farce. It is misleading. It is set out to mortally injure the culture and society and the social and economic well-being of our tribe and our way of life.

As Nisqually chairman, I have been fighting not only the State, but my grandfathers have been fighting the State of Washington for the past 80 years. Any legislation of this kind will not halt or alter our work for recognition and implementation of our treaty fishing rights. It will continue to go on.

The Nisqually Indian Tribe manages the steelhead for the Nisqually River. We conduct tests needed to obtain scale samples, census, and spawning surveys. We share this documentation with the State.

Why the State is unable to provide information to us is beyond me. I have no idea.

Senator COHEN. The State is not able to provide the information?

Mr. KALAMA. That is correct. We request it through telephone conversations. They just say they do not have a man available.

Senator COHEN. You want to know why they collect it in the first place?

Mr. KALAMA. They tell us they are unable to give us the information or maybe they have other priorities.

We also have asked for a Federal grant to be able to pay biologists to do some of the census surveys because a lot of the information is needed. We could use it.

The steelhead is part of our main fishery in the winter. In-migration occurs during December to January. It comes at the same time as our late chum salmon, which is really unique.

Essentially, the steelhead goes into the Nisqually River, a large majority as wild stock. As we conduct the only fishery on the natural steelhead stock, we are able to protect it from overharvest.

The sportsmen have the opportunity to fish from this stock, and in reading written testimony statistics show they have overharvested on the river by as much as 1,400 or more.

The State says there is lack of enforcement in the Nisqually River, but they do not check the sportsmen.

Senator COHEN. How do you check it? I am curious as to how they have any sense of how much the catch is on any given season, either by Indians or non-Indians.

Mr. KALAMA. We have fish tickets that the tribe receives from the tribal fish buyers daily. We submit the information by telephone to the State game department. They usually receive information as much as a couple of days later or a week later.

As for the punchcard method, that comes in as much as 3 to 6 months later. If we are fortunate or if the State is fortunate, they might get it sooner, but——

Senator COHEN. Do you mean so far as the sports fishermen are concerned? Do they not have a punchcard to punch and turn it in when they catch one?

Mr. KALAMA. If he wishes to, but it is not mandatory.

Senator COHEN. Is it fair to say that on both sides there is no real sense, that is, either side could exaggerate or decrease and there is no real effort on the part of the State or anybody to make it accurate?

Mr. DELACRUZ. The tribes, through the Northwest Indian Fisheries Commission and the tribes through their own governing body and their own fishery regulations, have strict control of the fish taken by Indian people, both on the commercial tickets and records that they keep and through the guides.

The State has made studies. There has been sampling. It is not a merit system where you turn it in. But there have been some real surveys done. There has been a question as to what is turned in after the *Boldt* decision and because of the controversy.

The data is not completely analyzed until a year after the season and sometimes as long as 18 months later. There is no way to make any inseason adjustments if they are overharvesting. They only know what is returned.

Senator COHEN. In your experience, has there been a decline in the resource itself?

Mr. MORGANROTH. I would refer to the record here.

Since the *Boldt* decision, the table shows that there has been a significant increase in catches. Other tables show that before 1978 the redd counts were low. And in 1978 and after the redd counts were high.

The redd count is where the field information is gathered. The redd is the nest where the steelhead lays its eggs.

Senator COHEN. The fact there have been increases in catches; does that mean there has been a decrease in the supply?

Mr. MORGANROTH. No; table 2 shows this, Mr. Chairman. There has been an increase in the wild run sizes. It also shows that the sports catch on the wild run has been greater, that is, than the wild catch of the tribe.

The escapement goal is set at 4,500 for the system. You will see that the escapement has gone beyond 4,500 in almost every case. It has been 6,000 and 4,430 and 4,707, and so on.

Those clearly show that there is not a decline in the runs.

Mr. DELACRUZ. On the coastal streams, where three of us come from—and realize that there are several hundred streams in the State of Washington that have steelhead in them—most all the studies have gone before the courts several times. There is no substance to the allegations made by the State.

Time and time again it has been shown by scientific people from the universities and so on that the coastal streams that we are talking about, because of artificial propagation and wild stocks and so on, are in better shape than most of the streams in the Pacific Northwest.

Yet this morning the testimony is that there are declining runs.

The fact of the matter is that in 1979 and 1980 on the Quinault we have 12,091 steelhead and 8,841 of those were wild and 3,250 of those were from our own artificial propagation.

This fact holds true throughout the system where you have had tribes, at least where a major part of the stream went through a reservation. Throughout the history of this conflict, it is on streams where Indians were pushed out of the fishery that stocks have declined. Indians have not even fished. The stocks are going down because of an unregulated sports fishery.

Sportsmen are able to take fish in the early spring as trout when they are going down the system. Nobody knows what the number is. You have a little salmon and a little steelhead when they open the season. They take them back, that is, some species in the ocean. They take them when they get back in the river as adults in the spawning beds.

That is what is unregulated. The Indians are probably the most regulated people in dealing with the resource at this point in time.

Mr. Kalama. Let me state this. If you check the game department records, they will show up to 1979 where a lot of Indians caught as much as 90 percent of certain runs on certain rivers. The Nisqually Tribe is unique. We are guaranteed to catch as much as 45 percent of the run on the reservation by a court order.

This means that the remaining 55 percent of offreservation is divided in half. That continued to go on until the U.S. Supreme Court decision came out in July 1979 to say that 50–50 was across the board and that nonreservation catches and ceremonial catches would be part of the Indian share.

You might want to take consideration of that, that the game department statistics are misleading.

Also, we have a tribal member who is at least 100 years old and probably is a lot older. He lives in the State of Washington. He is older than 95 percent of the people in the United States. His dad was one of the signers of the Medicine Creek Treaty between the United States and the Nisqually Indian Tribe.

Let me continue to go on in my testimony.

Senator Cohen. Sorry to interrupt you. Please continue.

Mr. Kalama. Let me summarize. There is lack of management in the Washington Department of Game. The Senate Select Committee could resolve the problem, I believe, by taking the management away from the game department and put it in the department of fisheries which had it in the first place. They were doing an excellent job until the fish became a political football where everybody had to fight each other.

If you really are going to resolve the issue, our tribe's recommendation is that you ask the tribes and the State, and especially the State, to sit down with the tribes and work out a good steelhead management plan which is needed to protect these resources.

It has been overharvested by the sportsmen.

Thank you very much.

[The prepared statement follows. Testimony resumes on p. 154.]

PREPARED STATEMENT OF GEORGE M. KALAMA, CHAIRMAN, NISQUALLY INDIAN TRIBE

Mr. Chairman, members of the Committee: My name is George Kalama. I am chairman of the Nisqually Indian Tribe which is located along the Nisqually River at the southern end of Puget Sound. I am here today because my tribe is a fishing society, and you are considerating legislation—"The Steelhead Trout Protection Act"—which would mortally injure the cultural, social and economic fabric of our tribal existence and also endanger the strong native steelhead runs that we have always known in our river.

We are deeply saddened that after more than eighty years of Supreme Court litigation the elected officials of our State that fought us in the courts and lost, and that in the past five years unsuccessfully brought to this Congress four bills that also proposed to decommercialize steelhead, would introduce yet another treaty abrogation bill into the Congress. These efforts sorely tax our limited resources and take up much of our time just to come back here to fight for our right to exist as a fishing society, exercising our treaty-secured fishing rights on all of the runs in our River. We are back here today to tell you the truth about the steelhead—how it is an essential part of our fishing way of life, and how it has been protected—not by the Game Department, but by the Tribe's conservation and management practices for all our generations. We hope to clear up some of the misconceptions that have been spread by the sponsors and advocates of the steelhead decommercialization legislation and to obtain your support for the approach taken by the Salmon and Steelhead Enhancement Act that the Congress passed only last December, to allow us to peacefully exercise our treaty rights and to encourage the State to work with us—not against us—in managing and protecting our native steelhead runs for both the treaty tribes and for non-Indians who like to sportfish in our rivers.

HISTORIC OVERVIEW OF THE NISQUALLY

The Nisqually River is the homeland of my Tribe. For thousands of years Nisqually Indians have lived in villages along the river, from its mouth—where the Treaty of Medicine Creek was negotiated with us—to its upper reaches near the mountain passes that we used to travel and as trade routes long before the white men came to our country. We have always been a fishing society, and the rich country of the Nisqually River and southern Puget Sound, where our river empties, supplied us with good fisheries all year 'round.

Our river supported five species of anadromous fish—pink salmon, chinook, coho, chum salmon and steelhead. To us, all five species are "salmon," and each one plays an important role in sustaining our way of life. They entered our river with overlapping run timing, with winter steelhead overlapping with spring salmon (chinook) that started in April or so, then moving into summer chinook; then every-other-year, into pink salmon; then fall chinook and coho salmon. Finally, in November, our unique late chum salmon fishery starts, peaking in late December and January, when it is mixed with the winter steelhead run that starts up the river in December. After the chum run was finished, the winter steelhead got us through the hardest part of the year, until the time when the spring salmon returned. For our entire existence, our seasons have been told by each of the fisheries returning to our river.

Knowledge of the need of each of our fish runs for water, cool weather, clean habitat, safe passage of plenty of fish to the spawning grounds, and so on, has been passed down by us from generation to generation. By the practices taught us by our elders, we conserved and protected each of the fish runs to the Nisqually River. We knew then, as we do today, that we must properly care for them because our future as a Tribe depends on continued access to healthy fisheries.

Traditionally and today, all our salmon, including steelhead, are the staple of our way of life. They are our every day food source, are dried and preserved for future use, are the core of our trade economy, and are central to our religious and ceremonial ways. For centuries we carried preserved fish across the mountain passes near the headwaters of our river on Mt. Rainier, to the tribes with whom we traded for other goods that were less available to us. Some of these tribes, and other Puget Sound bands, would also some to our river and partake with us in our winter ceremonial, celebrating the plentifulness of our unique winter fisheries for chum salmon and steelhead and renewing our religious strength and social bonds. This winter ceremony was one of our annual religious ceremonies linked to the cycles of fish we depend upon. This is how Governor Stevens found us when he came to our river to negotiate a treaty with us and with our other southern Puget Sound neighbors.

The first of the treaties to be negotiated among the fishing tribes was the Medicine Creek Treaty, negotiated with us and with our neighboring tribes and bands. In December of 1854 the United States' treaty negotiators called together our tribes and bands to a treaty conference near the mouth of the Nisqually River, on the Nisqually Delta. The negotiation was during the time our plentiful chum salmon and steelhead were running in the river. In the negotiation we refused to sign the treaty unless it guaranteed that we would always be able to continue our traditional fisheries, both on and off the reservations that were to be set aside for us, for all of the runs that we traditionally relied upon for food, ceremony and commerce. The United States agreed, and on December 26, 1854, the treaty was signed, whereby we passed title and ownership to vast areas of land to the United States in return for the United States' promise that we would always be able to continue being a fishing people, culturally and economically, and would always be able to conduct our tribal fisheries in our manner and assure the continuity of our tribal existence as a fishing society. The tree under which that solemn agreement was signed by my forefathers still stands on the Nisqually Delta, a constant reminder to my tribe of the rights we reserved for ourselves and the United States' guarantee that we would be able to forever continue our fishing way of life.

So, a s you can see, our tribal fisheries and dependence on steelhead did not begin in 1974 with the federal court decision in *U.S.* v.*Washington*. Fishing for steelhead as well as the other salmon runs for commerce and for our personal and ceremonial uses has been a part of our way of life for centuries, and we reserved the right to continue these fisheries when we entered into a treaty with the United States in 1854. We fished for steelhead then, supplied the white settlers that came to the territory with fish for several decades thereafter and continued our traditional winter fisheries for steelhead and chum salmon throughout all the years before *U.S.* v. *Washington*, even when we were being arrested for fishing.

After the turn of the century, before State laws changed to outlaw commercial fisheries for steelhead, tribal members continued to supply this catch to non-Indians, and to trade it with other tribes. Tribal members still alive today, including our oldest member who has seen more than a century of this history (he is 101 years old), also sold steelhead to commercial buyers in nearby towns. Steelhead was an especially popular commercial fish in those days because of its special qualities that allowed it to be shipped fresh over long distances, like by railroad to New York, without spoiling. In those days, as in pre-treaty times, the tribal fishermen were the suppliers, and the tribal fishing-based economies were strong.

Then came many hard years, when the state of Washington attempted to destroy our fishery by enacting legislation that said we couldn't catch steelhead in nets or sell them. Our fishermen were arrested and we became involved in countless civil and criminal lawsuits testing our treaty right. During this time, however, the Nisqually people continued to fish because that is our culture and our way of life. Beginning in the 1920's the state passed a series of laws that they unlawfully tried to apply to us, to keep us from fishing for steelhead which the state had redefined as a "game fish," different somehow from our other salmon.

In 1933, the state created the Game Department and took steelhead management away from the management of the other salmon which were in the Fisheries Department. Although biologically we can't understand this since steelhead have the same kinds of management requirements and spawning habitat needs as the other salmon, the state removed this fish from the fishery managers and allocated it to one user group in the state, the sportsmen. The Game Department then dealt with the steelhead by simply opening the rivers for sportsmen to use around the year, and by using harsh law enforcement tactics to forcibly remove treaty tribal fishermen from the rivers, taking their nets and canoes to make it difficult for us to continue fishing. The Nisqually seemed especially hard hit by these tactics, perhaps because our river is only a few miles from the state capitol of Olympia, and thus our fishermen were more visible to the state agencies directing the enforcement actions. But we did continue fishing, because that is our way.

We did not like the way we had to live during those years. We were still winning in the federal courts, as we had been since the *U.S.* v. *Winans* case before the Supreme Court in 1905. However, our tribal fishermen were having to hide around to sell steelhead, peddling it in other states and to anyone in the state that would buy it, because if the Game Department found us, they threw our fishermen in jail. If tribal members were smoking fish at that time of the year, usually smoking a mixture of chum salmon and steelhead, and Game Wardens saw the smoke, they would sometimes come down to the reservation and go to the smoke house, tearing off the door so they would see what fish were smoking inside.

Other times, tribal members' homes were overrun by Game Wardens trying to stop us from fishing. In the middle of these years, the Tribe offered to sell the fish at a low price to state institutions as a "compromise" with the state's position, so long as it could continue fishing, but the state refused to consider even that option. Tribal fishermen used to say the only way they would see their fish was to eat it, when they were in jail. These were not good times for the Tribe, and we never want to turn back the clock to those days. They were not helpful to us in maintaining a happy, healthy tribal society, and they interfered with our ability to continue our traditional management of our resources.

It was also frustrating because, throughout this country, the Supreme Court has upheld our fishing rights to fish on and off our reservation, for commercial as well as for ceremony and our own food, and for steelhead as well as other salmon we rely upon. Yet it seems that every time we won a victory upholding our treaty fishing rights, the state efforts to overturn our rights grew stronger. And it seems like the worst days were in the 1960's and early 1970's, when the Supreme Court specifically upheld our rights to fish for steelhead and restricted the state's use of "conservation" as a means to limit and close treaty fisheries. The state was losing the cases in the federal courts, and all of their efforts seemed directed at keeping the issue alive so they could develop another case to take back up to the Supreme Court to try, one more time, to take away our rights.

In the midst of all this turmoil in 1970, a new case was brought by the United States to seek a comprehensive adjudication of the treaty fishing rights of the Nisqually and six other tribes that had continued fishing during all the hard years. Subsequently, the rights of all of the twenty federally recognized tribes were adjudicated in that case, which was tried in 1973. Also in 1973 the Supreme Court handed down its decision in the second "Puyallup" case, strongly reaffirming our treaty steelhead fishing rights and invalidating the state's ban on tribal net fisheries and commercial sales of steelhead. Then, in early 1974, the U.S. District Court handed down its decision in *United States* v. *Washington*, federally affirming and defining very specifically our rights to each of our traditional fish species.

We thought the state would then begin to cooperate with us in managing the fishery resources and in implementing our rights. Instead, we found ourselves in another series of legal battles led by the state attorney general and attacking the very foundation of our rights. We were also thrust into a series of efforts to move legislation through the Congress that would "decommercialize" steelhead and generally subject us to the regulations of the state of Washington and abrogate our rights.

The legal efforts resulted in the strongest Supreme Court decision ever, *Washington* v. *Fishing Vessel Ass'n.*, 443 U.S. 658 (1979), upholding our rights and directing the state of Washington—and both its Fisheries and Game Departments—to comply with our rights. The legislative efforts to abrogate our rights also failed. Instead, the Congress enacted the Salmon and Steelhead Enhancement Act of 1980, passed less than a year ago. That law directs the tribal, state and federal managers to jointly plan for the management and enhncement of the salmon and steelhead resources of the state for the benefit of all and in a manner consistent with our rights. Since we had already developed a cooperative Nisqually River Drainage Management Plan with the Washington Department of Fisheries, the enactment of this law gave us great hope that we would finally begin to find better cooperation within the Game Department. We had looked forward to negotiating a Nisqually Drainage Steelhead Management Plan to go along with our Salmon Plan. Instead, the Washington Department of Game adopted as one of its long-term goals the abrogation of our rights by "decommercialization" of steelhead. Now, we find ourselves faced with S. 874, another effort to have Congress abrogate our fishing rights. To the Nisqually Tribe, the continuation of these efforts is totally unjustified and harmful both to our way of life and to the resource itself.

CONSERVATION AND MANAGEMENT OF THE NISQUALLY RIVER STEELHEAD

On the Nisqually River today the steellhead and chum salmon enter the river together from December to February, and the steelhead continue through April. These fish runs support the Nisqually Tribe's major "bread and butter" fishery and have traditionally supplied the Tribe's occupation and subsistence through the longest and hardest part of the year. The Tribe has been careful throughout all these years to conserve and protect these most important resources. Traditionally and historically, the Tribe managed the river through the cultural and religious practices handed down through each generation for the care of the fisheries as they passed through each village's fishing sites, successfully assuring that fish reached the next village and that plenty of fish reached clean spawning grounds to generate a new run for the future years. In the past decade, as the Tribe's modern fisheries management program has developed, the winter steelhead and chum salmon fishery has been emphasized in Tribal management because of the great, traditional importance of these runs to the Nisqually Tribe.

Contrary to the allegations of the sponsors and advocates of S. 874, there is no steelhead conservation problem associated with our tribal fisheries. In fact, the Nisqually River today is one of the few remaining Puget Sound streams that, like the coastal rivers, is overwhelmingly a native-fish stream. It has a healthy, strong run of big native steelhead that are especially prized by sportsmen for their size and fight. These runs have been preserved, not because of state Game Department practices, but because the steelhead run is so critically important to the Nisqually Tribe that we have assured it survival. We have been lucky, too, that the Game Department has largely ignored our river in its plantings of the small weaker Chambers Creek hatchery fish, so our native run has remained strong and large and popular for sport fishermen as well as supportive of our treaty fisheries.

This introduction by the Game Department of weaker, alien stocks into the Nisqually River is an example of what we consider to be the greatest threat to the Nisqually River steelhead, the poor management practices of the Washington Department of Game. First, the Game Department has no established escapement goal for Nisqually River steelhead nor is that agency attempting to develop one. In addition, there is no annual estimate of steelhead run size. Rather, the Game Department formulates a pre-season estimate of harvestable numbers of steelhead for the river based on the average harvest over the past ten years, modified by a factor determined by the rate of return of immature one-year steelhead (jacks) to the Chambers Creek hatchery. Chambers Creek is not in the Nisqually drainage and its runs are hatchery, not wild native fish like the Nisqually runs.

Finally, there is no inseason monitoring or regulation of the sports fishery by the Game Department, and no accurate counting mechanism to keep track of sportsmen's steelhead catch. The magnitude of the sport harvest is left to chance; in 1980 the sport catch exceeded the harvestable number of steelhead by 1,400 fish. Spawning escapement is also left to chance insofar as the Game Department is concerned. In recent years, no spawning ground counts have been made by the Game Department to confirm that their "management" is allowing an adequate spawning escapement.

The Nisqually Tribe, on the other hand, is closely managing the steelhead run and gathering hard data to help guide more precise management in the future. Also, the Tribe is managed on a "quota" system in accordance with detailed procedures outlined by the federal court in *U.S.* v. *Washington*. Those procedures require the Tribe and the Game Department to agree on the harvestable number of steelhead before the season and for the Tribe to stop fishing when its allocation is reached. It is virtually impossible for a tribe to endanger the conservation of the resources under these practices and requirements. These rules also ensure that sportsmen will have their full opportunity to catch their lawful share of the steelhead resource.

The Nisqually Tribe is developing a comprehensive steelhead management program designed to establish precise run size estimates and escapement goals that will ensure the perpetuation of the native Nisqually River steelhead. Outlined here are the major components of our management program.

HARVEST DATA

The commercial steelhead harvest provides an excellent data base for inseason harvest management. We now have comprehensive catch per landing data for several seasons. This data base is used for inseason management decisions to ensure an adequate spawning escapement each year. A comparable data base is not available for the sports fishery. Precise inseason harvest management of the sports fishery is practically impossible because of the difficulty in obtaining current harvest data. Overharvest is, therefore, more likely to occur by sports fishing than by a properly managed commercial fishery.

An example of this occurred in 1979–80 on the Nisqually River. The Game Department's pre-season prediction of harvestable steelhead was 2,600. The Nisqually Tribe caught its share, 1,300 steelhead, and then closed its steelhead fishery. But, the sports fishery, with no inseason management by the Game Department, harvested in excess of 2,700 stelhead, 1,400 more than they were entitled to, cutting into the spawning escapement agreed to by the Tribe and the Washington Department of Game.

SPAWNING GROUND COUNTS

For the past two years, the Nisqually Tribe has conducted aerial spawning ground counts on the Nisqually River. We have also made counts using weirs in tributary streams. These counts are very precise in determining the spawning utilization by steelhead of various portions of the drainage and confirm that an adequate spawning escapement is occurring. No similar programs and no such counts are conducted by the Game Department.

LIFE HISTORY DATA

The Nisqually Tribe has conducted a number of studies to more precisely determine the life history of Nisqually River steelhead. This information is important in maintaining and improving the natural production of steelhead in the river. In addition to the spawning ground surveys discussed above, these studies include:

1. Analysis of scale samples of adult steelhead in the commercial catch to determine age of the fish and proportion of wild (natural) origin versus hatchery origin fish in the catch.
2. Determination of the timing of emergence of juveniles from the gravel after spawning and incubation. This is done by gathering temperature data for the river and electroshocking for the emergent fry.
3. Determination of juvenile steelhead distribution while rearing in the drainage. This is done by electroshocking and seining.
4. Studying the downstream migration of juvenile steelhead after their period of freshwater residence to determine the timing of the outmigration, the abundance of outmigration and the proportion of wild (natural) versus hatchery origin outmigrants.

Biologists from the Game Department have assisted in some of these studies; however, the Game Department is either unable or unwilling to conduct these essential research tasks upon which the management of a strong natural run depends.

HABITAT NEEDS OF STEELHEAD

The ultimate purpose of the studies outlined above, as well as flow studies conducted by the Tribe, is to determine as precisely as possible the freshwater habitat needs of steelhead and with this information to maximize the natural production of steelhead in the Nisqually River. To this end, the Tribe has conducted flow studies and determined with some precision the instream flow needs of steelhead in the Nisqually River.

Since 1974, the Tribe has been in court before the Federal Energy Regulatory Commission seeking minimum instream flow requirements for the hydroelectric facilities operating on the Nisqually River. The Game Department has intervened in this litigation to support the Tribe and, because of the tribal-state effort, since 1978 the hydroelectric utilities on the Nisqually have been required to meet certain minimum flow requirements that are beneficial to fish. No such requirements existed prior to the Tribes' initiation of proceedings to determine instream habitat needs.

Although we have developed this beneficial management program because steelhead is important to us, I want to point out that our steelhead management practices are beneficial to the sport steelhead fishery as well. First, in recent years the Tribe has confined its steelhead fishery primarily to the period of December through early February. This is a period of frequent high river flows and poor sport fishing conditions. From late February through April, sport fishing conditions improve. By voluntarily focusing its fishing efforts on these early winter months, the Tribe has kept its fishery closed during the best part of the steelhead sport fishing season. An equally important benefit to the sport fishery is the efforts our program has made in recent years to protect and maintain a high quality wild run steelhead fishery.

I would like to state here and now that we are proud of our management program and its achievements. We believe, and the evidence closely supports, that we are developing a comprehensive program that will protect and enhance the wild fish that make up the outstanding steelhead fishery of the Nisqually River. We strongly object to the suggestion that somehow our fishery threatens the conservation of Nisqually River steelhead. It most certainly does not!

CONCLUSION

The effects of the proposed legislation, S. 874, would be devastating for our Tribe as well as for other treaty tribes, and for the resource itself. The legislation would abrogate our treaty rights to catch steelhead, one of the fish that we reserved the right to catch when we signed the Treaty at the mouth of our river in 1854. The bill would subject us to regulation by the State of Washington—to state laws "prohibiting, restricting or regulating the taking, possession, transportation or sale of steelhead trout", both within and outside our reservation boundaries, as if we were ordinary non-treaty citizens of the state! This is precisely what the Supreme Court has told the state it absolutely could not do in every decision since *United States* v. *Winans*, in 1905, all the way through *Washington* v. *Fishing Vessel Ass'n*, which Senator Gorton unsuccessfully argued for the State in 1979. The legislation would deny us the right to catch steelhead in our traditional manner and to use it for our traditional, treaty-right purposes, including as the commerce of our Tribe. It would violate our territorial rights by thrusting state jurisdiction into our reservations, over a resource that we reserved an exclusive right to within our reservation boundaries. For the Nisqually, it would also create horrendous management conflicts with one of our most important salmon runs, the chum run which enters our river at the same time as the steelhead. And, most importantly, it would tear at the very fabric of our tribal existence, destroy our winter occupation and industry, and gut the culture, economy and social unity of the Tribe.

The bill reflects precisely the sort of policy of termination that was attempted and rejected by the United States some two decades ago. Since 1974, both the Congress and Democratic as well as Republican Administrations have advocated a policy of "self determination" for Indian tribes—a policy which is directly contrary to the results proposed by S. 874. This self determination policy and the adjudicated treaty rights of the Northwest Tribes were recognized by the last Congress and provided for in the positive policies and directives of the Salmon and Steelhead Enhancement Act.

The Steelhead Trout Protection Bill proposes to break the word of the United States, given in 1854 when the United States signed the treaty, promising that my Tribe would always be secure in our traditional fisheries and way of life. Most shocking, perhaps, is that it is being proposed to the United States Congress after the law has been made crystal clear by the federal courts. It is proposed for the benefit of one group—sportsmen of the state of Washington—private citizens who want to establish exclusive fisheries for steelhead for their private recreation. For that purpose the sponsors of this legislation suggest that my tribe, and other fishing tribes, should give up our treaty reserved rights to our way of life.

The Nisqually Indians are a fishing society and the steelhead resource has been protected because of our efforts, because we rely upon that resource from generation to generation ourselves. The importance of our treaty right to fish this resource cannot be exchanged for something else—and it cannot be "bought out", because its value is not in money. The right to continue fishing for steelhead, along with the other salmon, secures our right to continue our existence as the fishing society we have always been. This is why the Medicine Creek Treaty has in it a provision that secures our fishing rights. This is why we have continued fishing every year since the Treaty was signed, and will continue every year hereafter. This is why the courts have so forcefully upheld our rights and directed the State of Washington to stop its recalcitrance and begin complying with the treaty terms.

Rather than to generate a new era of litigation over the Constitutionality of such a clear abrogation, the Nisqually Tribe believes the Congress should give our treaty rights, as defined by the Supreme Court, and the positive statements and policies pronounced by the Congress through the Salmon and Steelhead Enhancement Act, a chance to work. We believe the interests of the resource, the Nation, and the sportsmen, too, are best served by the straight-forward implementation of the court decisions and of the Salmon and Steelhead Enhancement Act of 1980. With the treaty fishing rights of the tribes secure, we can continue, as fishing societies, our active role in managing and protecting the native steelhead resources of our rivers so they will be there for all of us in the future.

I appreciate the opportunity to speak today. The Nisqually Tribe would also like to extend an invitation to the members of this Committee to come to the Nisqually River, so we can show you what it is the Nisqually Tribe is doing with the conservation and management of steelhead and salmon—the resources our way of life depend upon.

Thank you.

Senator COHEN. Mr. DeLaCruz?

STATEMENT OF JOSEPH B. DeLaCRUZ, PRESIDENT, QUINAULT INDIAN NATION—Continued

Mr. DELACRUZ. Mr. Chairman, let me conclude. I would like to read some things in the record.

After 1974, the tribes and the Federal Government and the State government and the management entities have gone through a lot.

Because of the *Boldt* decision and the President's Task Force, we have a committee in the U.S. Senate and a committee in the U.S. House of Representatives who do thousands of hours of work to try to address this problem.

The answer that they came up with was Public Law 96–561.

It is a copout when I hear people in high office saying there is no money. What do you do? There are thousands of man-hours of work involved in this. The integrity and the ideology that was in those people who addressed the management enhancement, has been spent on this.

That piece of legislation needs to be carried forth.

Senator COHEN. You are talking about the enhancement program?

Mr. DELACRUZ. Public Law 96–561, which was the Management and Enhancement Act.

Senator COHEN. The one currently unfunded?

Mr. DELACRUZ. Even though there is no funding, there were a lot of hours spent on that. A lot of different entities put in work on that. That ideology needs to be carried forth. It should not be pushed aside because there is no money. I have heard that a lot of times.

All departments that were involved in the management of the resource had their input. We almost lost that bill, again because of the type of bigotry that happens over the steelhead. It almost died during the lameduck session.

But people recognized that we need that type of legislation. We need to have people working in the spirit of cooperation to rebuild what was one of the biggest resources in the Pacific Northwest.

The steelhead is not only in trouble in the State of Washington, it is in trouble throughout its whole range. It is not only true about the steelhead, but it is also true of the salmon.

The same thing happened on the east coast. What happened on the east coast was mismanagement by the various political entities. That is a fact. There has been a tremendous effort after the fact by all people to rehabilitate that.

I believe that is what has happened to salmon.

If people continue to persist in this type of legislation, then we are going to be at odds.

Senator COHEN. We killed off the breeding ground, the spawning ground of the salmon through our pollution. We finally have made some steps to correct that.

Mr. DELACRUZ. When the Clean Water Act was passed in 1968, I did not see the Attorney General's office or the Governor's office cracking down on big industries who were violating the law. I watched them drag their feet for a number of years.

In closing, I believe the sportsmen and the Indians and all people need this resource. Unless there is a spirit of cooperation, a desire to really look at the facts, then we are not going to get anywhere.

The courts have the records. There is conflict and controversy which can go on until steelhead is no more. But the Indians have their foot forward. They work in the spirit of cooperation throughout this process. It angers us every time we pick up a newspaper and we are being blamed for what has happened to the resource.

It is unfortunate. Some of us were meeting with the Governor of the State, again talking about getting the departments together and getting back to a spirit of cooperation and resolving our problems in the State of Washington with the understanding that some of the resources in some of the streams are in trouble. Together we can address them but not through this type of legislation.

Senator COHEN. Let me say that I hope one of the outcomes of this particular day of hearing would that we would have the type of concentration of effort and focus of attention upon the need to do that.

Frankly, it does not make sense either for Indians or non-Indians or sportsmen or tribes to be overfishing a species if, in fact, that is occurring. I do not know it is.

But if it is, then it does not make sense for anybody. Ultimately it is self-defeating. Over a period of time it is going to result in the destruction of not only the species but of your livelihood.

If the sportsmen desire to fish for that species then it does not make a good deal of sense on either side if, in fact, that is occurring.

The purpose of this hearing, as I said at the outset, was not to simply—and I appreciate the emotion involved, on your part, and its intensity—but I do not have any intention of trying to subvert or in any way undermine the treaty obligations by some kind of subterfuge.

I do not think any member of this committee is going to subscribe to that.

If it is a question of abrogating a treaty, then we would have to do it outright in my judgment and have the courage to say that is what we are doing and have the honesty to say it.

But I do not intend to be a part of that or of any kind of indirect reversal of rights that have been established.

So, I understand what you are saying to me. I hope you understand what I am saying to you. We want a factual determination in this hearing. I have not yet heard established, to my satisfaction one way or the other, what has happened to this species.

A lot of questions are going to be asked and a lot of answers hopefully will come forth. You have asked the committee some questions. We will answer those questions. We will be asking you and the other various departments involved for information as well, but I consider this to be a factual determination as to what is happening to that species.

I hope one thing that will come about will be that we will have some sort of cooperative effort to resolve whatever differences exist.

Mr. DELACRUZ. Mr. Chairman, if this hearing continues through the day, then some of the witnesses that you will call on this afternoon will present the technical facts.

There is another area where there was a line of questioning. On section 6 of the bill there were questions.

This was about the tribes going to the Court of Claims for compensation.

There is no way that I can understand in the laws where I want to take his house and he has the right to file in court for what the value of it is.

Our Indian people have gone through a couple of generations; they are dead and gone. And we are still trying to settle the claims with the U.S. Government. To me that is not fair. To me that is the taking of a property right.

It is outright taking and saying it is up to us to prove that we are right and to go to the court.

Some tribes have gone through a couple of generations and they are still trying to get their day in court, and the answers for what was taken from them.

Senator COHEN. The notion of a speedy trial has long since left much of our jurisprudence at every level of government.

Mr. KALAMA. I would like to take this opportunity as a representative of the Northwest Indian Fisheries Commission to invite you and the other Senators on the committee to see the fish production facilities that the tribes have.

These facilities benefit not only the sportsmen, but also trollers, commercial fishermen, charter boats, and so forth. As Indian tribes we are the last one in line, so we receive the leftovers that everyone else has the pleasure of enjoying first. And furthermore, Senator Cohen, the Nisqually Indian Tribe has never authorized the steelhead to be called a game fish, it has and will remain a salmon to my Indian people.

Senator COHEN. Thank you.

Ladies and gentlemen, the committee will stand in recess until 2 o'clock this afternoon.

AFTERNOON SESSION

Senator GORTON (acting chairman). The hearing will resume.

At this point we will continue with our testimony. We will hear from the next panel of witnesses.

Is there anyone here from panel B, the Muckleshoot, Puyallup, Tulalip, and Upper Skagit Tribes?

Please proceed.

STATEMENT OF DOREEN M. SCHUYLER, FISHERIES MANAGER, UPPER SKAGIT TRIBE

Ms. SCHUYLER. Thank you, Mr. Chairman.

My name is Doreen Schuyler. I am a member of the Upper Skagit Tribe. Today I will be representing both the Upper Skagit Tribe and the Sauk-Suiattle Tribe.

We will have the testimony now of the Muckleshoot Tribe.

Senator GORTON. Mr. KingGeorge?

STATEMENT OF GILBERT D. KINGGEORGE, CHAIRMAN, MUCKLESHOOT INDIAN TRIBE

Mr. KINGGEORGE. Thank you, Mr. Chairman.

Honorary members of the Senate Select Committee on Indian Affairs, my name is Gilbert D. KingGeorge. I am the chairman of the Muckleshoot Indian Tribe.

Our tribe is opposed to Senate bill 874, proposed legislation to decommercialize steelhead to treaty Indian tribes. Passage of the conservation and enhancement of the salmon and steelhead bill by the 96th Congress is already in effect presently.

In order to acquaint you with our tribal position we must first have a historical review of our tribe and issues leading up to the fisheries problems of the Muckleshoot Indian Tribe.

Our tribe has usual and accustomed fishing grounds in the greater Seattle area which includes three major drainage systems: Lake Washington, Duwamish/Green River, White/Upper Puyallup River; and the Saltwater of the Puget Sound.

The Muckleshoot Indian Tribe is included in two Stevens Treaties negotiated with the United States: the Treaty of Medicine Creek negotiated December 26, 1854 and the Treaty of Point Elliott negotiated January 22, 1855.

Ancestors of our tribe prior, during, and after treaty times caught chinook, coho, kokanee, sockeye, chum, pink salmon, and steelhead which they ate fresh and cured for winter consumption and for exchange and trade.

Environmental degradation, since treaty times, particularly to our on-reservation fishery in the White River system has affected the availability of salmon and steelhead to our tribal fishery.

Flood control dams, water diversions, silt, spawning bed damages, lack of adequate water flow, and lack of fish passageways through these barriers has had drastic effects on our systems.

These environmental changes, along with prior interceptions, overharvests of our salmon and steelhead prior to 1974, has impacted our resource and the availability to harvest by our tribe in our usual and accustomed fishing places.

The Muckleshoot Indian Tribe, along with other treaty tribes, led the fight for our fishing rights by "fish-ins" in the 1960's which eventually led to *United States* v. *Washington*, February 12, 1974. All major portions were upheld by the U.S. Supreme Court, July 2, 1979.

The fishing controversy in the Northwest resulted with the foregoing judicial rulings of the 1970's. Federal District Court Judge George Boldt, after 4 years of hearings and expert testimony, ruled in phase I, that treaty tribes were entitled to 50 percent of the fish runs to their usual and accustomed fishing grounds.

This decision, despite adverse publicity, has stemmed the tide of our fishery decline and addressed the environmental effects on the fishery—phase II—in our usual and accustomed grounds.

Misinterpretation and misunderstandings of the Stevens Treaties and the interpretations by the judicial rulings of the 1970's created mistrust by concerned parties.

Once again, the tribes are forced to the "Halls of Congress" to protect a right reserved under treaties Congress chose to negotiate to acquire vast amounts of land here in the Pacific Northwest.

Fisheries management is the key to our tribal successes to curb the decline of our fish runs to our river systems along with the enhancement and enforcement of our tribal regulations. The recent acquisition of an environmental biologist will further our efforts in fisheries.

Our tribal ordinance and regulations govern our fisheries programs and with continued cooperation with State, Federal, and intertribal agencies, our successes in the protection and enhancement of our valuable resources will continue.

Steelhead management, particularly in the Duwamish/Green River system has achieved success especially in our cooperative data exchange with the Washington State Department of Game. These successes, with our professional tribal fisheries technical staff, will continue into the future.

Senate bill 874 will negate this cooperative management between States and tribes and would render future successes in our river systems nearly impossible for steelhead management.

We have pointed out the importance of the steelhead management and its ultimate effects on our valuable resource and its protection. However, it must be noted that the rights and opportunity to harvest steelhead, as guaranteed by the Stevens Treaties, is at stake with Senate bill 874.

The Muckleshoot Indian Tribe considers any modifications, limitations, or restrictions on our steelhead and/or salmon fishing rights, as agreed upon by the treaty negotiators in the 1800's, as an abrogation of the Stevens Treaties negotiated with the U.S. Government.

Honorable Senators of the Senate Select Committee on Indian Affairs, the Muckleshoot Indian Tribe leaves with you the following quotation entitled "Great Nations, like great men, keep their word," quoted by the Honorable Justice Hugo Black commenting on Indian treaties:

> If the rights of native Americans are not respected, the honor of the United States, and its avowed principles of freedom, due process, and self-determination will suffer severely in the eyes of the world community.
>
> Only in Indian America are the functions of the schools, police, hospitals, public works and social services, real estate and even private businesses controlled by the Federal Government and civil employees.
>
> Our leaders speak to no avail when they espouse human rights of foreign soils while here at home the rights of Native Americans continue to be threatened and ignored.

In closing, we, the Muckleshoot Indian Tribe, ask for your support against Senate bill 874, which we feel would violate the very treaties made with the U.S. Government in the mid-1800's.

Steelhead decommercilization would be a catastrophe for our tribal fishing rights, opportunity, and livelihood of our tribal members.

Thank you for your kind attention and invitation to testify before the Senate Select Committee on Indian Affairs.

I would ask that our tribal position paper be inserted in the record.

Senator GORTON. Without objection, that will be placed in the record at this point.

[The tribal position paper follows. Testimony resumes on p. 184.]

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

MUCKLESHOOT INDIAN TRIBE
RESOLUTION NO. 81-12-7

Senate Bill S-874/House Bill HR 2978

WHEREAS, The Muckleshoot Indian Tribal Council is the duly constituted governing body of the Muckleshoot Indian Tribe, in accordance with Article III, Section I, of its Constitution and Bylaws approved by the Secretary of the Interior on May 13, 1936; and,

WHEREAS, Under the Constitution and Bylaws of the tribe, the Muckleshoot Tribal Council is given the responsible duty of protecting the health, security and general welfare of the Muckleshoot Tribal members; and,

WHEREAS, The Tribe is the successor to, and is made up principally of descendents of villages and/or bands which were parties to the Stevens Treaties of Point Elliott, 12 Stat. 927 and the Medicine Creek Treaty, 10 Stat. 1132, which provided in Art. #5 for a reservation of a right to take fish at our usual and accustomed grounds and stations with dependency on Steelhead for subsistence in the cold winter months; and;

WHEREAS, Article VI cl. 2 of the United States Constitution provides "The Constitution of the United States and all Treaties made or which shall be made, under the authority of the United States shall be the Supreme Law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding; and,

WHEREAS, The Congress of the United States chose to negotiate treaties with the Indian tribes to acquire vast amounts of Indian lands especially ceded lands of Medicine Creek Treaty of 1854 and Point Elliott Treaty of 1855; and, Page two (Continued) Resolution # 8-17-7

Whereas, The Muckleshoot Indian Tribe, one of 13 Intervener-Plaintiff tribes in the United States vs Washington (1974) and duly upheld by the United States Supreme Court in July 1979; and,

Whereas, Senate Bill S 874 and HR 2978 "Steelhead Decommercialization" proposed legislation was introduced and co-sponsored by the majority of the Washington State Congressional delegation; and,

Whereas, The proposed legislation would place a higher value on sports and recreation interests rather than the economic needs and livelihood methods of an impoverished tribe like Muckleshoot Indian Tribe and also, our tribe along with several Northwest Indian Tribes would be affected by the proposed decommercialization legislation of our sovereign treaty rights to harvest Steelhead

NOW THEREFORE BE IT RESOLVED that the Muckleshoot Indian Tribe is opposed to the proposed S 874/ HR 2978 Dcommercialization of Steelhead legislation which is contrary to the Stevens treaties which would limit, modify or totally preempt our tribal fishery (including Steelhead) reserved by our ancestors and secured to said Indians by the Stevens treaties.

AND BE IT FURTHER RESOLVED that this proposed legislation would be contrary to the United States Supreme Court ruling of July 1979 and that any attempts to legislate our "age old" rights away without prior consultation of affected Indian tribes would be considered a total abrogation of the Stevens Treaties negotiated between the Indian tribes and the United States government at the Point Elliott and Medicine Creek Treaty of (1854-1855).

CERTIFICATION

As Secretary of the Muckleshoot Indian Tribal Council, I hereby certify that the above resolution was duly adopted at a Regular meeting of the Muckleshoot Indian Tribe on the 7th day of April 1981, held on the Muckleshoot Indian Reservation, Auburn, Washington, at which a quorum was present, by a vote of 7 For and 0 against.

Shirley M. Sneatlum
Shirley M. Sneatlum, Secretary
Muckleshoot Tribal Council

Gilbert KingGeorge, Chairman
Muckleshoot Tribal Council

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

MUCKLESHOOT INDIAN TRIBE

TRIBAL POSITION

on

Senate Bill 874

The Muckleshoot Indian Tribe is opposed to the proposed legislation to Decommercialize Steelhead to treaty tribes.

1.) The proposed legislation would preempt and abrogate a fishing right which was reserved under the Stevens treaties negotiated with the United States government December 1854 and January 22, 1855.

2.) Dependency upon the Steelhead fishery is the only fishery for our tribe during the cold Winter months.

3.) Lost opportunity has already made an impact to our in-Puget Sound fishery through prior interceptions, environmental degradation of our usual and accustomed fishing grounds. State restrictions and mismanagement upon our fishery prior to the United States vs Washington (1974) has limited and in some areas totally destroyed and preempted our resource during the past century.

4.) To suggest any further restrictions, limitation or modification of our sacred Indian treaty right (including Steelhead) would add further economic hardships on our tribal members which experiences high rate of unemployment.

5.) Steelhead is considered along with the Pacific Salmon within the context of the Stevens Treaties which was neogitated by Treaty tribes with the United States government and duly implimented by the Federal District Court in 1974 findings. The United States Supreme Court upheld all major portions of the U.S. vs Washington in July 1979.

6.) Our tribe through our Tribal Fisheries Department has made great progress in the field of fisheries management and enhancements since 1974. We have worked with other agencies of the State, Federal and Inter-tribal organizations cooperatively in achieving an orderly fishery. Steelhead data collection in the Duwamish-Green River and other systems was incomplete prior to the "Boldt Decision" 1974.

7.) The United States trust responsibility and the treaties made would be in serious jeopardy with the possible preemption by Senate Bill 874.

MUCKLESHOOT INDIAN TRIBE
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Analysis
of
Treaty and Sport
Winter Steelhead Fisheries
on the
Duwamish-Green River

Stated comparisons beteen Treaty and sport winter Steelhead catches tend to be incomplete, misleading, and, at times, purposefully erroneous in representing the true situation because the respective catches are rarely related to the harvestable surplus (numbers of fish in excess of spawning escapement needs) and each entities' 50% allocation of that harvestable surplus. After all, the bottom line of competent fisheries management is not which side out-fished the other. Rather, the bottom line for each of the two groups is to fully harvest their respective 50% allocation, i.e., no wastage, without over-harvesting, i.e., adversely impacting the needed spawning escapement.

An excellent example is the Elliott Bay/Duwamish-Green River system; a major Winter Steelhead producing system located within the largest metropolitan area in Western Washington. Harvest data for the seven succeeding years to U.S. v. Washington (1974) are presented in Table 1. A cursory examination of the Treaty and Sport catches indicates the Treaty catch significantly exceeded the Sport catch in each of the first three years, and was exceeded by the Sport catch in each of the last four years. However, compare the Treaty catch to its' 50% allocation of the harvestable surplus (as determined by the Washington Department of Game in 1974-75 thru 1976-77 and jointly by the Department and the Tribe in 1977-78 thru 1980-81). The Muckleshoot Indian Tribe has exhibited phenomenal Co-Management capabilities in fully harvesting the Treaty allocation without adversely impacting the needed spawning escapement.

The Treaty and Sport Winter Steelhead fisheries in this system are CoManaged by the Muckleshoot Indian Tribe and the Washington Department of Game using the following criteria: (1) 100% of the hatchery plant return is harvestable; (2) the native fish return is to be protected: and (3) the spawning escapement is to be stabilized and evaluated relative to the system's production capacity. The superb Co-Manager success over the last four years is presented in Table 2. The spawning escapement has been stabilized, and with a generally increasing percentage of native Winter Steelhead comprising that spawning escapement. It must be noted that the Sport fisheries' "over-harve" of its 50% allocation in each of the last four years (Table 1) has primarily been of hatchery plant returns, and has not, therefore, adversely impacted either the Co-Management criteria or the spawning escapement needs. In fact, the "over-harvest" in 1980-81 was agreed to by the Tribe in exchange for 200,000 Winter Steelhead eggs to be reared in the Tribal hatchery and released into the system for the benefit of both Treaty and Sport fishers.

Co-Management will succeed, and phenomenally so, to the benefit of the fish, Treaty fishers, and Sport fishers.

(Foregoing analysis was submitted by our Senior Biologist B. Doble)
(With the approval Charles A. Sneatlum, Director of Fisheries)

Table 1

Treaty and Sport Winter Steelhead catches
in the
Elliott Bay/Duwamish-Green River system

Season	Estimated Harvestable Surplus	50% Allocation	Treaty Catch	Sport Catch
1974-75	15,602	7,801	7,349	4,291
1975-76	13,416	6,708	6,190	1,591
1976-77	5,260	2,630	3,258	2,415
1977-78	9,000	4,500	4,280	4,903
1978-79	9,000	4,500	4,418	5,204
1979-80	9,000	4,500	4,486	6,572
1980-81	8,500	4,250	4,338	5,386

Table 2

Estimated spawning escapement of Winter Steelhead in Duwamish-Green.

Year	Estimated Spawning Escapement	Estimated Percentage Wild Fish in Spawning Escapement
1977-78	1,936	56.0
1978-79	1,726	80.2
1979-80	1,827	86.8
1980-81	1,513	71.6

MUCKLESHOOT INDIAN TRIBE
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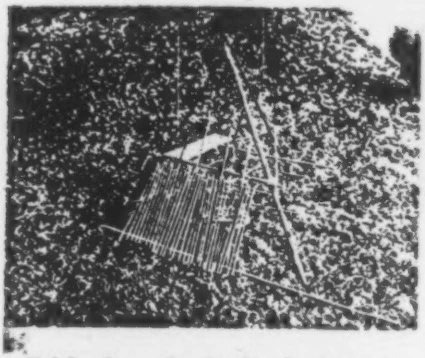
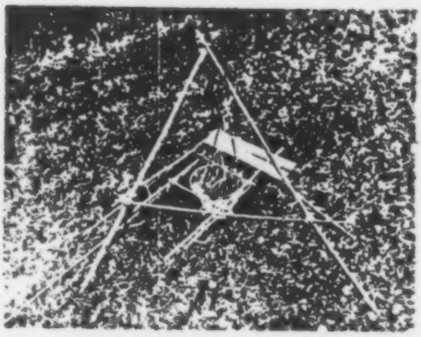
MUCKLESHOOT INDIAN TRIBE

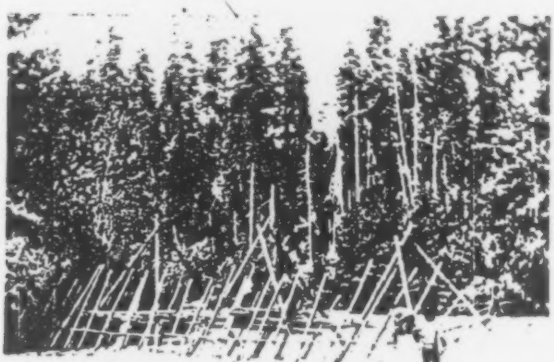
ANCIENT FISHERY



Model of a weir showing the tripod, the platform and the screen from the upstream side.

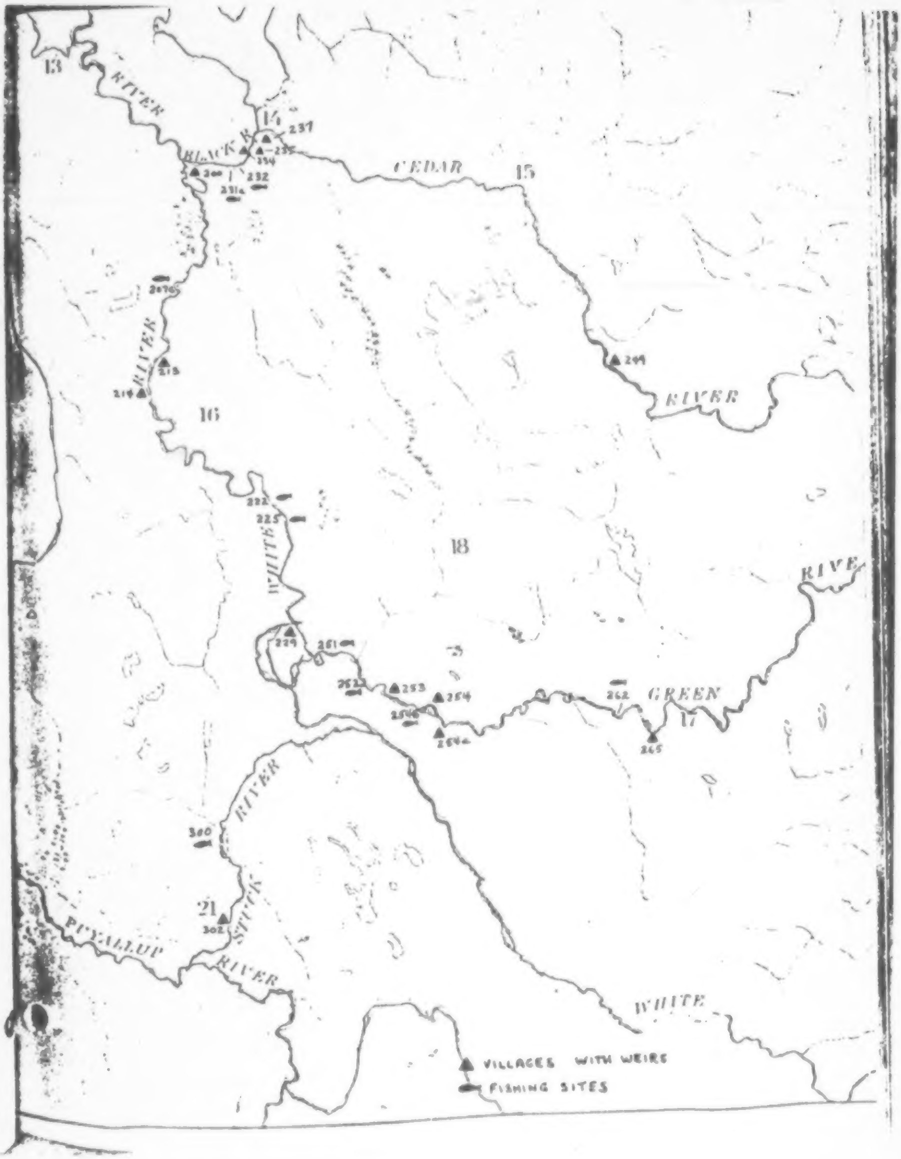


Model of a weir showing the dip net raised and the platform. Taken from downstream left.



Weir under construction on White River, four miles southeast of Auburn, Washington. Picture taken in 1903 by Mr. Elmer Patton.

PLATE I


13
RIVER
BLACK R.
14
237
235
234
200
232
231a
CEDAR
15
207b
RIVER
215
214
16
209
RIVER
222
225
WHITE
18
RIVE
229
251
252
253
254
254b
254a
262
GREEN
17
265
RIVER
300
21
302
STUCK
PUYALLUP
RIVER
WHITE
VILLAGES WITH WEIRS
FISHING SITES

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MUCKLESHOOT INDIAN TRIBE

FISHERIES DEPARTMENT

TODAY

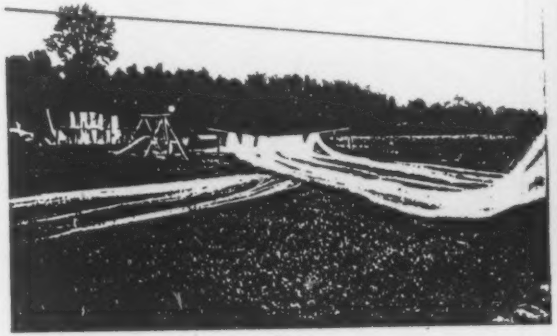
FISHERIES DEPARTMENT

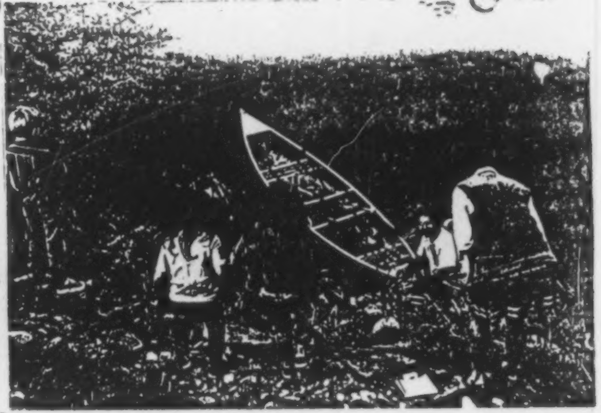
February 12, 1974, Judge George Boldt issued his land mark decision verifying that Indian treaty rights was the law of the land under the United States Constitution. This decision was upheld by the United States Supreme Court in their decision on July 2, 1979. Over 100 years after the signing of the Point Elliott Treaty which, in Article 5, guaranteed, "The right of taking fish at usual and accustomed grounds and stations is secured to said Indians in common with all citizens of the Territory..." Muckleshoot fishermen are finally able to realize both food and income from their labor.

Charlie Sneatlum, present Fisheries Director, provided the information on his office. Created in 1974, the department operates through funding from the Bureau of Indian Affairs. The tribe collects a 3% fish tax from all tribal fish catches with 1% allocated for public relations involving legislative lobbying on behalf of the tribe and 2% allocated for enhancement efforts of the tribal operated Keta Creek Rearing Station on the Green River.

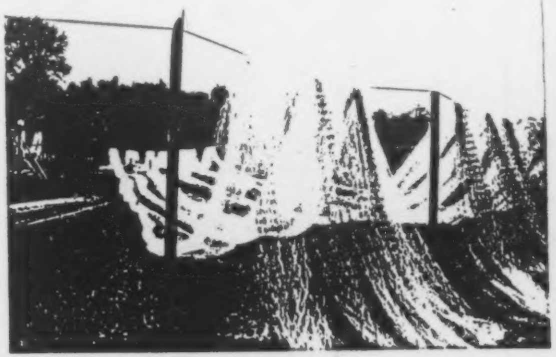
The Fisheries Department is divided into three major departments; biology, enforcement, and enrollment. The department operates under a five member Fish Committee organized and elected annually by the tribal fishermen. All major resolutions are brought before the Tribal Council.

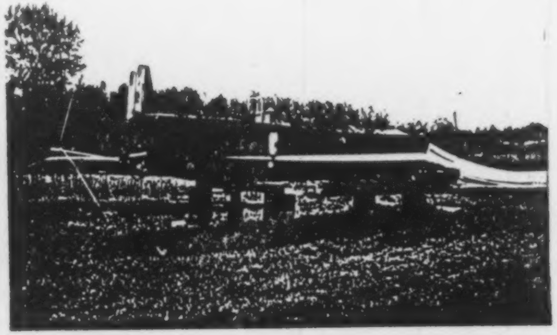
The Fisheries Department considers one of its most important roles to be the protection of the environment with all other interested agencies throughout the state as well as the protection of the guaranteed sovereign rights of the Indian Nation.



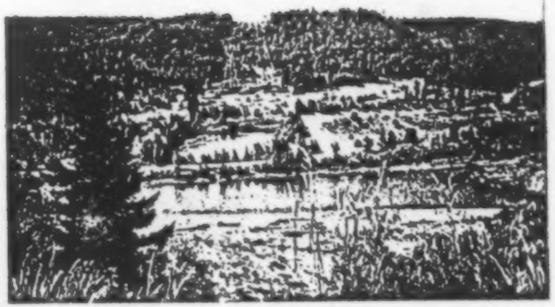


FISHING, A MAJOR SOURCE OF INCOME





Both the White River and the Green River have been used by the Muckleshoot people for hundreds of years for several varieties of salmon.



KETA CREEK REARING STATION

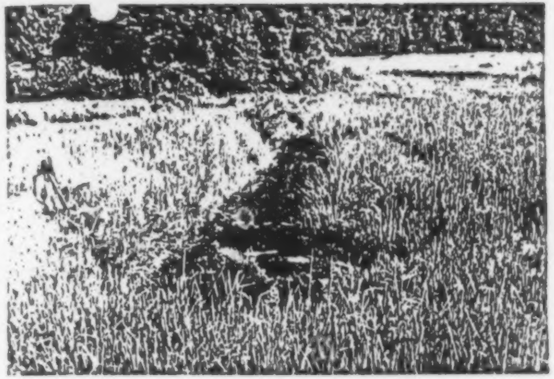
In 1976-77, the Muckleshoot Tribe began a program of salmon hatching. Funds collected from the tribal fishermen and the B.I.A. provide for an enhancement biologist, a biology aide and a hatchery manager.

The station's main purpose is to collect eggs from the yearling salmon now being kept in a holding tank and then rear their eggs directly in Keta Creek until they are ready for release. At this time the young salmon will enter Crisp Creek, follow it one mile to the Green River, then the Duwamish River, Elliott Bay, Puget Sound and the Pacific Ocean. Three to four years later, the mature salmon will return this same route to spawn in Keta Creek.

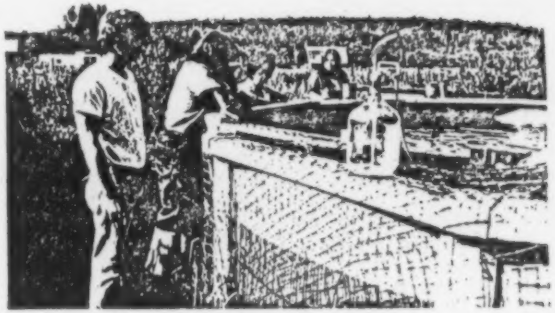
MUCKLESHOOT INDIAN TRIBE
KETA CR STATION

The tribe has Chinook, Chum and Coho salmon in the holding tank but they plan to concentrate on the Chum as they are apparently easier to raise.

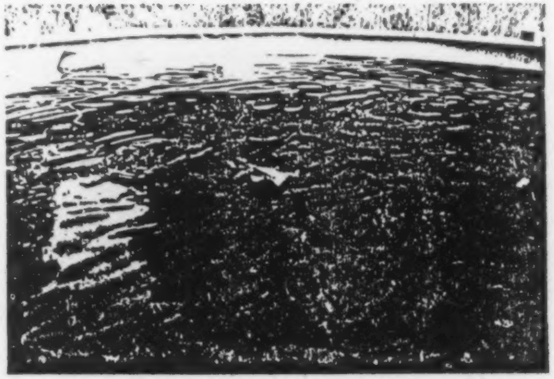
John Stevenson, biology aide



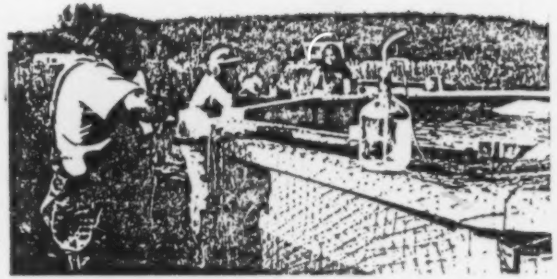
Keta Creek

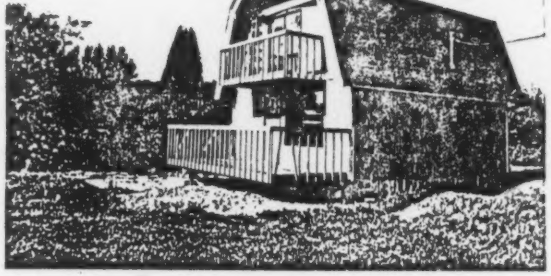


Holding tank

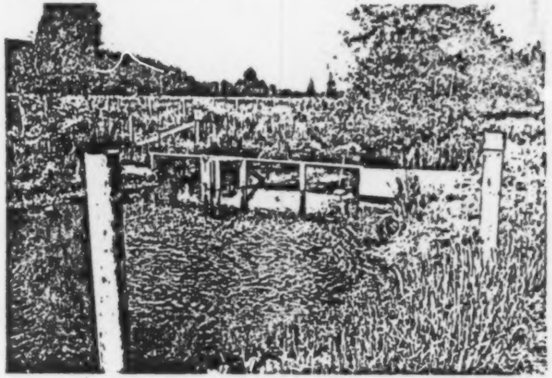


Yearling holding tank

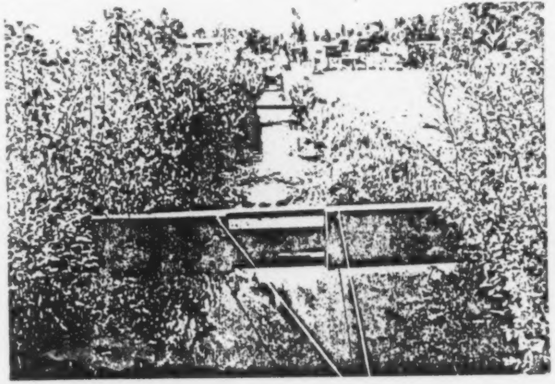




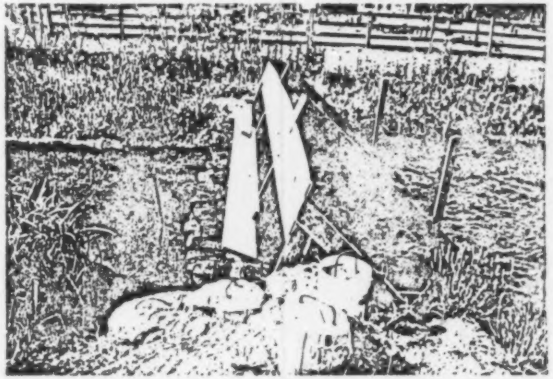
Hatchery Manager home



Crisp/Spaight Creek



Fish weir allowing salmon flow



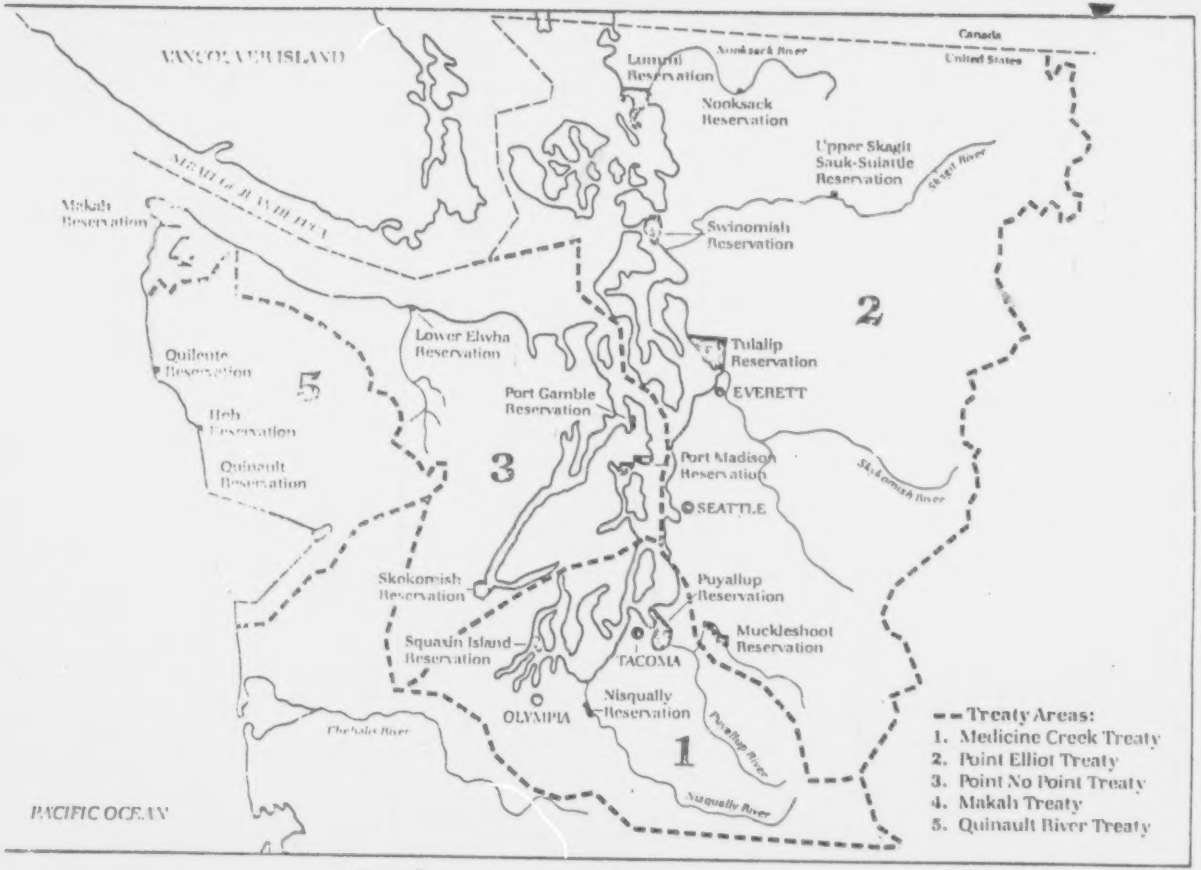
Fish weir stopping salmon for spawning

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

STEVENS TREATIES

TREATY OF POINT ELLIOTT

January 22, 1855


Canada
United States
VANCOUVER ISLAND
STRAIT of JUAN DE FUCA
Lummi Reservation
Nooksack River
Nooksack Reservation
Upper Skagit Sauk-Suiattle Reservation
Skagit River
Swinomish Reservation
Makah Reservation
4
2
Tulalip Reservation
EVERETT
Lower Elwha Reservation
Quileute Reservation
5
Port Gamble Reservation
Hoh Reservation
3
Port Madison Reservation
Skykomish River
Quinault Reservation
SEATTLE
Skokomish Reservation
Puyallup Reservation
Muckleshoot Reservation
Squaxin Island Reservation
TACOMA
Nisqually Reservation
OLYMPIA
Chehalis River
1
Puyallup River
Nisqually River
PACIFIC OCEAN
Treaty Areas:
1. Medicine Creek Treaty
2. Point Elliot Treaty
3. Point No Point Treaty
4. Makah Treaty
5. Quinault River Treaty

Northwestern Indian Treaty Areas
Western Washington

JAMES BUCHANNAN.

President of the United States of America

To All and Singular to Whom These Presents Shall Come, Greeting:
Jan. 22, 1855 12 Stat. 927. Proclaimed April 11, 1859. Ratified Mar. 8, 1859

WHEREAS a treaty was made and concluded at Muckl-te-oh, or Point Elliott in the Territory of Washington, the twenty-second day of January, one thousand eight hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian Affairs for the said Territory, on the part of the United States and the hereinafter-named chiefs, headmen and delegates of the Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalh-kahmish, Skope-ahmish, St-kah-mish, Snoqualmoo, Skai-wha-mish, N'Quentl-m-mish, Sk-tahle-jum, Stoluck-who-mish, Sno-ho-mish, Skagit, Kik-i-allus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ah, Nook-wax-cha-mish, Mee-see-qua-guilch, Cho-bah-ah-bish and other allied and subordinate tribes and band of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes and duly authorized by law; which treaty is in the following words and figures to wit

ARTICLE of agreement and convention made and concluded at Muckl-te-oh, or Point Elliott, in the Territory of Washington, this twenty-second day of January, eighteen hundred and fifty-five by Isaac I. Stevens, govenor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, (Smalh-kamish. Skope-ahmish, St-kah-mish), Snoqualmoo, Skai-wha-mish, N'Quentl-ma-mish, Sk-tah-le-jum, Stoluck-wha-mish, Sno-ho-mish, Skagit, Kik-i-allus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ha, Nook-wa-chah-mish, Mee-see-qua-quilch, Cho-bah-ah-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes, and duly authorized by them.

ARTICLE 1. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by the, bounded and described as follows: Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the same through the middle of Admiralty Inlet to Suquamish Head; thence southwesterly, through the peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet and thence round the foot of Vashon's Island eastwardly and southeastwardly to the place of beginning, including all the islands comprised within said boundaries, and all the right, title, and interest of the said tribes and bands to any lands within the territory of the United States.

ARTICLE 2. There is, however, reserved for the present use and occupation of the said tribes and bands the following tracts of land, viz: the amount of two sections, or twelve hundred and eighty acres, surrounding the small bight at the head of Port Madison called by the Indians Noo-sohk-um; the amount of two sections, or twelve hundred and eighty acres, on the north side Hwhomish Bay and the creek emptying into the same called Kwilt-seh-da, the peninsula at the southeatern end of Perry's Island, called Shais-quihl, and the island called Chah-choo-sen, situated in the Lummi River at the point of separation of the mouths emptying respectively into Bell [illegible] and the Gulf of Georgia. All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the said tribes or bands, and of the superintendent or agent, but, if necessary for the public convenience, roads may be run through the said reserves, the Indians being compensated for any damage thereby done them.

ARTICLE 3. There is also reserved from out the lands hereby ceded the amount of thirty-six sections, or one township of land, on the northeastern shore of Port Gardner, and north of the mouth of Sno-homish River, including Tulalip Bay and the before-mentioned Kwilt-seh-da Creek, for the purpose of establishing thereon agricultural and industrial school, as hereinafter mentioned and agreed, and with a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory. Provided, however, That the President may establish the central agency and general reservation at such other point as he may deem for the benefit of the Indians.

ARTICLE 4. The said tribes and bands agree to remove to and settle upon the said first above-mentioned reservations within one year after the ratification of this treaty, or sooner, if the means are furnished them. In the mean time it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

ARTICLE 5. The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. -- PROVIDED, HOWEVER, That they shall not take shell-fish from any beds staked or cultivated by citizens.

ARTICLE 6. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of one hundred and fifty thousand dollars, in the following manner--that is to say: For the first year after the ratification hereof, fifteen thousand dollars; for the next two years, twelve thousand dollars each year; for the next three years, ten thousand dollars each year; for the next four years, seven thousand five hundred dollars each year; for the next five years, six thousand dollars each year; and for the last five years, four thousand two hundre and fifty dollars each year. All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may, from time to time, determine at his discretion upon what beneficial objects to expend the same; and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE 7. The President may hereafter, when in his opinion the interests of the Territory shall require and the welfare of the said Indians be promoted, remove them from either or all of the special reservations hereinbefore made to the said general reservation, or such other suitable place within said Territory as he may dee fit, on renumerating them for their improvements and the expenses of such removal, or may consolidate them with other friendly tribes or bands; and he may further at his discretion cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payments made accordingly therefor.

ARTICLE 8. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE 9. The said tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof and they pledge themselves to commit no depredations on the property of such citizens Should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and the other Indians to the Government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on other Indians within the Territory the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the same tribes agree not to shelter or conceal offender against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE 10. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribe who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE 11. The said tribes and bands agree to free all slaves now held by them and not to purchase or acquire others hereafter.

ARTICLE 12. The said tribes and bands further agree not to trade at Cancouver' Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside in their reservations without consent of the Superintendent or agent.

ARTICLE 13. To enable the said Indians to remove to and settle upon their aforesiad reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of fifteen thousand dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

ARTICLE 14. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a black smith, carpenter, and farmer for the like term of twenty years to instruct the Indians in their respective occupations. And the United States finally agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities.

ARTICLE 15. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

IN TESTIMONEY WHEREOF, the said Isaac I. Stevens, govenor and superintendent of Indian Affairs, and the undersigned chiefs, headmen and delegates of the aforesaid tribes and bands of Indians have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISSAC I. STEVENS, Governor and Superintendent

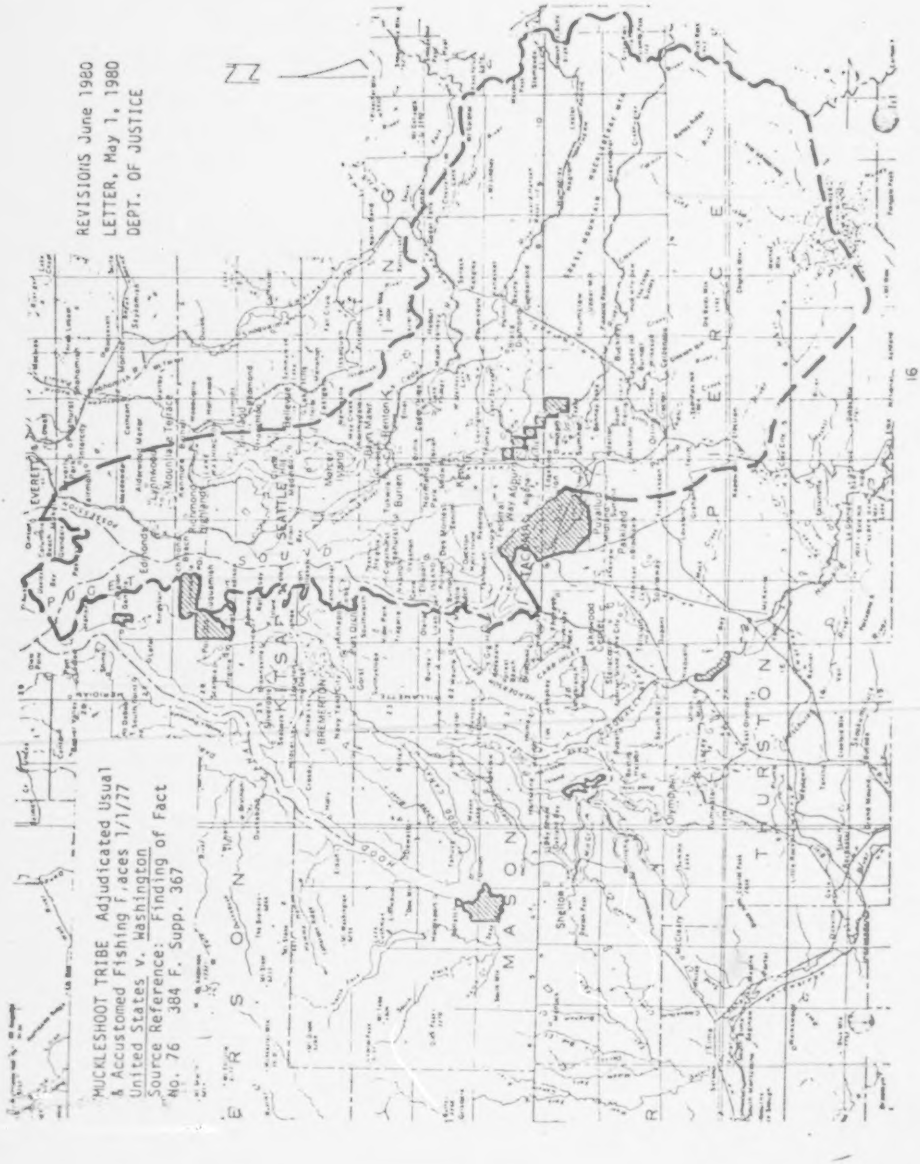
1. Seattle, Chief of the Dwamish and Suquamish tribes, 2. Pat-ka-nam, Chief of the Snoqualmoo, Snohomish and other tribes, 3. Chow-its-hoot, Chief of the Lummi and other tribes, 4. Goliah, Chief of the Skagits and other allied tribes, 5. Kwallattum, or General Pierce, Sub-Chief of the Skagit tribe 6. S'Hoolst-hoot, Sub-Chief of the Snohomish, 7. Snah-talc or Bonaparte, Sub-Chief of the Snohomish, 8. Squushum, or The Smoke, Sub-Chief of the Snoqualmoo, 9. See-alla-pa-han, or the Priest, Sub-Chief of Sk-tah-le-jum, 10. He-ush-ka-nam, or George Bonaparte, Sub-Chief of Snohomish, 11. Tse-nah-talc, or Joseph Bonaparte, Sub-Chief of Snohomish, 12. Ns'Ski-oos, or Jackson, Sub-Chief of Snohomish, 13. Wats-ka-lah-tch-ie, or John Hobtsthoot, Sub-Chief of Snohomish, 14. Sme-mai-hu, Sub-Chief of Skai-who-mish, 15. Slat-eah-ka-nam, Sub-Chief of Snoqualmoo, 16. St' Hau-ai, Sub-Chief of Snoqualmoo 17. L'gs-ken, Sub-Chief of Skaiwha-mish, 18. S'Sleht-solt, or Peter, Sub-Chief of Snohomish, 19. Do-queh-oo-satl, Snoqualmoo tribe, 20. John Kenam, Sub-Chief, Snoqualmoo, 21. Klemsh-ka-nam, Snoqualmoo, 21. T'sHuahntl, Dwamish Sub-Chief, 22. Kwuss-ka-nam, or George Snatelum, Sen., Skagit tribe, 23. Ilel-mits, or George Snatelum, Skagit Sub-Chief, 24. S'kwai-kwi, Skagit tribe, Sub-Chief, 25. Seh-lek-q Sub-Chief of Lummi tribe, 26. S'h'-chenoos, or General Washington, Sub-Chief of Lummi tribe, 27. Whai-lan-hu, or Davy Crockett, Sub-Chief of Lummi tribe, 28. Sheah-delt-hu, Sub Chief of Lummi tribe, 29. Kwult-seh, Sub-Chief of Lummi tribe, 30. Kwull-et-hu, Lummi tribe, 31. Kleh-kent-soot, Skagit tribe, 32. Sohn-heh-ovs, Skagit tribe, 33. Slden-ap-han or General Warren, Skagit tribe, 34. Dhul-whil-tan, Sub-Chief, of Suquamish tribe, 35. Ske-eh-tum, Skagit tribe, 36. Patch-Kanam, or Dome, Skagit tribe, 37. Sats-kanam, Squin-ah-mish tribe, 38. Sd-zo-namtl, Kikiallus band, 39. Dahtl-de-min, Sub-Chief of Sah-ku-mah-hu, 40. Sd'zek-du-num, Me-sek-we-guilse Sub-Chief, 41. Now-a-chais, Sub-Chief of Dwamish, 42. Mis-lO-tche, or Wah-hehl-tchoo, Sub-Chief of Suquamish, 43. Sloe-noksh-tan or Jim, Suquamish trib 44. Moo-whah-lad-hu, or Jack, Suquamish tribe, 45. Too-leh-plan, Suquamish tribe, 46. Sla-seh-doo-an, or Kec-kudk, Dwamish tribe, 47. Slovilt-meh-time, Sub-Chief of Suquamish, 48. We-ai-pah, Skaiwhamish tribe, 49. Sah-an-hu, or Hallam, Snohomish tribe, 50. She-hope, or General Pierce, Skagit tribe, 51. Hwn-lah-lakq, or Thomas Jefferson, Lummi tribe, 52. Cht-simpt, Lummi tribe, 53. Tse-sum-ten, Lummi tribe, 54. Klt-hahl-ten, Lummi tribe, 55. Kut-ta-kanam, or John, Lummi tribe, 56. Oh-lahben, Noo-qua-cha-mish band, 57. Noo-heh-oos, Snoqualmoo tribe, 58. Hweh-uk, Snoqualmoo tribe, 59. Peh-nus, Skai-whamish tribe, 60 Yim-ka-nam, Snoqualmoo tribe, 61. Twooi-as-kut, Skaiwhamish tribe, 62. Luch-al-kanam, Snoqualmoo tribe, 63. S' Hoot-kanam, Snoqualmoo tribe, 64. Sme-akanam, Snoqualmoo tribe, 65. Sad-zic-keh, Snoqualmoo tribe, 66. Sleh-mahl, Skaiwhamish band, 67. Charley, Skagit tribe, 68. Sampson, Skagit tribe, 69. John Taylor, Snohomish tribe, 70. Hatch-kwentum, Skagit tribe, 71. Ye-i-kum, Skagit tribe, 72. Tikwa-ma-han, Skagit tribe, 73. Sto-dum-han, Swinamish band, 74. Be-lole, Swinamish band, 75. D'ze-lole-gwam-hu Skagit tribe, 76. Steh-shail, William, Skaiwhamish band, 77. Kel-kahl-tsoot, Swinamish tribe, 78. Patsen, Skagit tribe, 79. Pat-eh-us, Noo-wha-ah, Sub Chief, 80. S'hoolk-ka-nam, Lummi Sub-Chief, 81. Ch-lok-suts, Lummi Sub-Chief.

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 · (206) 939-3311

UNITED STATES VS WASHINGTON
February 12, 1974
MUCKLESHOOT INDIAN TRIBE
Usual and accustomed
fishing places

Muckleshoot Tribe

Prior to and during treaty times, the Indian ancestors of the present day Muckleshoot Indians had usual and accustomed fishing places primarily at locations on the upper Puyallup, the Carbon, Stuck, White, Green, Cedar and Black Rivers, the tributaries to these rivers (including Soos Creek, Burns Creek and Newaukum Creek) and Lake Washington, and secondarily in the saltwater of Puget Sound" (384 F.Supp. 367).


MUCKLESHOOT TRIBE Adjudicated Usual
& Accustomed Fishing Places 1/1/77
United States v. Washington
Source Reference: Finding of Fact
No. 76 384 F. Supp. 367
REVISIONS June 1980
LETTER, May 1, 1980
DEPT. OF JUSTICE
N
EVERETT
SEATTLE
BREMERTON
Olympia
Shelton
Puyallup
Kent
Renton
Bellevue
Edmonds
K I N G
P I E R C E
T H U R S T O N
M A S O N
K I T S A P
16

Senator **Gorton**. Thank you.

Mr. Fryberg?

STATEMENT OF RAYMOND FRYBERG, FISHERIES DIRECTOR, TULALIP TRIBE

Mr. **Fryberg**. Thank you, Mr. Chairman.

My name is Raymond Fryberg. I am the fisheries director for the Tulalip Tribes.

I would like to thank the chairman and members of this committee for the opportunity to testify today.

The Tulalip Tribes reservation is located adjacent to Puget Sound, approximately 50 miles north of Seattle. We are historically a fishing people whose primary fishery is centered around those salmon and steelhead stocks returning to the Stillaguamish and the Snohomish River systems lying north and south of our reservation and also our on-reservation enhancement facilities.

At Tulalip we manage a marine fishing fleet who fish salmon the same as steelhead. We choose to fish the marine waters because it allows us to harvest our stocks in prime condition.

This also allows us enough room for our fishing gear and our different gear types.

Although steelhead make up only a small portion of the total tribal catch, our steelhead fishery supports many families who choose to brave the severe winter conditions of Puget Sound.

We oppose the unfairness of this bill and believe it is a dishonorable thing to do, to try to abrogate our treaty rights which were affirmed and then reaffirmed by the Supreme Court.

This treaty right does not damage the resource and to the contrary we believe that our tribal management provides a valuable tool in collecting accurate and precise data which allows us to analyze run sizes far more accurately than say a creel census.

Tulalip is managing its fishery around the naturally spawning steelheads and focusing its harvest on the hatchery stocks which provide a consistently smaller fish.

The Tulalip Tribe will continue to protect all native stocks within their areas. While the sportsmen are afforded the mobility to pick up and move when not catching any fish, our tribe is locked within their usual and accustomed areas for all times.

If the political uncertainties were removed, Tulalip is seriously considering enhancing steelhead on the Stillaguamish and Snohomish River systems. I would like to say that very preliminary discussions have been held with the department of game in Washington State.

Finally, this type of legislation being presented here makes it difficult to properly manage the resource. We hope that we can get past these political controversies and get on with proper protection and enhancement of the resource.

I would like, on behalf of the Tulalip Tribes and its many members, to thank the chairman and the committee members for this opportunity to testify.

I would ask that my statement be placed in the record.

Senator **Gorton**. Without objection, your prepared statement will be placed in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF RAYMOND FRYBERG, FISHERIES DIRECTOR, TULALIP TRIBES

Good morning. My name is Raymond Fryberg. I am the Fisheries Director for the Tulalip Tribes. I would like to thank the Chairman and members of this Committee for the opportunity to testify today on the Steelhead Decommercialization Bill being considered, especially as it affects the Tulalip Tribes.

The Tulalip Tribes' reservation is located on Puget Sound, approximately 50 miles north of Seattle. The Tribes' primary fisheries are on salmon and steelhead stocks returning to the Stillaguamish River, north of the reservation, the Snohomish River south of the reservation and on reservation enhancement facilities at Tulalip Bay.

Salmon and steelhead fishing is the economic and cultural backbone of the Tulalip Tribes, and is by far the largest source of income for tribal members. In addition the Tulalips utilize large numbers both of salmon and steelhead for subsistence and ceremonial purposes.

The Tulalip Tribes are a marine fishing tribe. Though we have fishing rights on the Snohomish River system we chose to fish only the marine waters. We chose this pattern of fishing because the Tulalips have traditionally been a marine fishing people, and because it allows us to catch the fish in better condition than if we waited and took them in the rivers. By conducting our fisheries in marine waters it also affords enough space for all our fishermen to set their gear properly. This would not be the case if we were to fish the river. This fishing pattern also avoids gear conflicts between treaty and sports fishermen in the rivers. It should be noted that while steelhead represent a comparatively small fraction of Tulalip's total catch, they are very important to the economy of the tribes since they are fished at a time when no other fish are available for harvest. They are thus the sole source of Winter income for many tribal families.

As with other treaty tribes of the Northwest, the Tulalips are strongly opposed to this Steelhead Decommercialization Bill. We view it as but one more attempt to take from the Indians what is rightfully ours, simply because some segment of the non-Indian community wants it. We Indians have a word for this sort of behavior. We call it theft. But beyond the obvious unfairness of such actions which in our mind shames the honor of this nation, this bill and accompanying language gives the false impression that the treaty fishing somehow harms the resource. This is simply untrue. For example, in order to protect native stocks we target our steelhead fishery on hatchery stocks and avoid the naturally spawning stocks because we feel they need protection. We do this even though the hatchery fish are on the average smaller and thus of lesser value than the wild stocks. Because of this strategy, the treaty catch on our river systems runs about one-third of the harvestable number of Winter steelhead instead of the allowable one-half. This is a loss of several thousand fish a year. But we have no choice. While a sportsman can abandon a depleted river and fish elsewhere, the tribes are restricted for all time to their traditional fishing areas. It should also be noted that Tulalip does not fish for Summer steelhead at all, so that this run, which is quite sizable in our rivers, goes totally to the sports fishery.

The Bill also says that tribes can sell licenses to sportsmen for the privilege of fishing for steelhead on reservation, a right we already have and which some tribes exercise. However, since no steelhead streams pass through the Tulalip reservation there is no point in our attempting such an exercise.

Finally, the Tulalip Tribes are very interested in building the steelhead runs of our area through enhancement, and would be doing so now were it not for continued attempts to deprive the treaty tribes their right to harvest them. Hopefully we can soon reach a time when all with concern for this invaluable resource will begin to work together. To this end we have had very preliminary discussions with the Washington State Department of Game about efforts at steelhead enhancement. We're convinced that such efforts together with sound harvest management policies represents what is best for treaty fishermen, sportsmen and the resource itself.

Thank you again for the opportunity to testify today.

Senator GORTON. Thank you.

Mr. Satiacum?

STATEMENT OF ROBERT SATIACUM, CHAIRMAN, PUYALLUP NATION COUNCIL

Mr. SATIACUM. Thank you, Mr. Chairman.

I am Robert Satiacum, chairman of the Puyallup Nation Council, governing body of the Puyallup Nation.

Our people have been involved for many generations in court cases concerning our rights to fish for steelhead. We have defended ourselves against cases in which the State of Washington has attempted to take away our rights. We have also taken the initiative to seek and obtain some protection for our right to steelhead through the judicial system.

I, myself, have been a party in those court cases on more than one occasion. I would, therefore, like to summarize attempts which have been made in the past through the judicial and legislative branches to take away our right to fish for steelhead.

The State of Washington has, of course, made several attempts over the years to interfere with the tribes' right to fish for all species of salmon.

The courts have rejected those attempts in such cases as *United States* v. *Winans*, *Washington* v. *Tulee*, *Washington* v. *Satiacum*, and others.

In 1963 the State of Washington filed a case aimed directly at taking away our right to fish for steelhead—*Washington Department of Game* v. *Puyallup Nation*.

The State of Washington prohibits its citizens from fishing for steelhead with nets; those people can only use a hook and line. The State for many years attempted to enforce the same limitation against our people.

That restriction would have taken away our rights and our ability to feed ourselves and our families during the winter months when steelhead are the only available fish.

The State attempted to apply that law to us with physical assault, arrest, and prosecution from the State courts. But we continued to fish and defended ourselves in court.

The one case required 17 years of fighting against the State courts and three trips to the U.S. Supreme Court.

The Supreme Court upheld our right to fish for steelhead by ruling that the State cannot prohibit us from using nets to catch steelhead. The court said that net fishing for commercial purposes was covered by "the treaty." The court held that the treaty prevents the State from banning our net fishing for steelhead in order to allocate the entire run to the sport fishery.

Senator GORTON. There is a rollcall on the floor, so I will have to suspend relatively soon. I would like to get each member of this panel completed, if I can, before I go to the floor.

Please continue.

Mr. SATIACUM. Now even the courts have finally recognized that State agencies must obey Federal court orders in the fishing cases, such as *Puget Sound Gillnetters Association* v. *Moos*.

The most recent Supreme Court decision on our fishing rights—*Washington* v. *Fishing Vessel Association*—affirmed that our steelhead fisheries are entitled to the same protection as our other fisheries.

The same sharing principles which protect our rights to other species of salmon also apply to steelhead.

The State of Washington argued in that case that the treaties are meaningless and provide us with no protection. The Supreme Court rejected that argument without hesitation ruling as they had many times before that a treaty such as ours "is essentially a contract between two sovereign nations," and that treaties continue to protect our fishing rights.

The U.S. Supreme Court has recently held that the treaties that protect our rights to steelhead are the supreme law of the land. They continue to protect our rights to support ourselves and our families by fishing on those stocks.

We say that it would be a violation of the United States honor and moral responsibilities as well as a violation of the law to ignore the highest law of the land and pass a statute which attempts to take away our steelhead.

To its credit, Congress has refused to interfere with our steelheads and has, in fact, recognized and affirmed our right to fish for steelheads.

In *Washington* v. *Commercial Passenger Fishing Vessel Association*, the Supreme Court noted that Congress rejected three attempts in the 1960's to terminate our fishing rights.

More recently, Congress has refused to enact proposed bills whose stated purpose was termination of our right to fish commercially for steelhead.

Congress has, instead reaffirmed our treaty protected fishing rights, including the right to fish for steelhead. See Fishery Conservation and Management Act of 1976; Salmon and Steelhead Conservation and Enactment Act of 1980.

The courts have recognized and upheld, at least to some extent, our fishing rights. The Congress has recognized and respected those rights. Action by this Congress to terminate our right to steelhead would renew the bitter dispute controversy and litigation which we had hoped would be laid to rest by the recent Supreme Court ruling.

We urge you to leave the parties free to cooperatively manage the resource instead of enacting this attack on our rights which would only renew the controversy and drive the parties further apart.

We do not consent to the steelhead bill. If this bill becomes law, then we will continue to fight in the international forums, if necessary.

I have supplemental testimony which I would ask be submitted for the record.

Senator GORTON. Without objection, that will be placed in the record at this point.

[The prepared statement follows. Testimony resumes on p. 190.]

PREPARED STATEMENT OF THE PUYALLUP NATION

The importance of steelhead or winter salmon to Puyallup Nation fishers cannot be underestimated. The importance of this fish to Native American economic independence has been mentioned before and will be dealt with later in this report.

An aspect of steelhead that seems to receive little attention is the cultural and religious significance of the resource. Historically and even today the return signifies the onset of winter. The steelhead, then, provide evidence of seasonal change with winter being the end of the cycle to be followed by spring or rebirth. Native American religious heritage is well founded in naturalistic/environmental awareness. The steelhead, then, had significance to Puyallup's beyond its need for sustenance.

Historically, the steelhead was an item of barter. Tribal and individual wealth was partially based on stored fish resources. Since the steelhead was the last run of fish before winter, it was the last and most important contributing species taken. As a protein source, steelhead were consumed fresh, smoked, dried, or otherwise cured. Eggs were eaten, and skin, viscera, and skeleton used for the maintenance of everyday life. Stored fish were the singlemost important source of winter protein that allowed Early Puyallups to survive until spring and the return of the Puyallup River Spring Chinook salmon.

The steelhead decommercialization bill has been erroneously labeled and presented as a conservation measure to protect steelhead from decimation. In reality, it is the Tribes which are protecting this resource more than any other group through professional Tribal environmental and fisheries management programs.

The real significance of conservation of natural resources applies to wild populations. In the Puyallup River system, there are both hatchery and wild runs of steelhead. Wild steelhead generally are of a much larger size than hatchery fish since a larger portion of their population spend an additional year in the ocean.

Wild steelhead are obviously more sensitive to environmental degradation. In the Puyallup System, the major environmental degradation has occurred in the form of dams, water diversions, stream channelization, poor logging practices, and pollution. The Electron Diversion Dam, in addition to blocking upstream migration, dewaters the upper mainstem Puyallup to the point where adult steelhead often cannot reach Niessen Creek, and other major steelhead spawning tributaries.

This trend of environmental degradation would probably continue until all wild steelhead are decimated, except that Washington treaty tribes have the only means to halt such destruction of the environment.

Because of differences between run timing in wild and hatchery steelhead, fisheries can be managed to target on hatchery stocks until there are adequate numbers of wild fish to harvest. The Puyallup Nation, manages their tribal fishery in such a manner. The major portion of tribal harvests occur in December and January, well ahead of the major run timing of the wild population. Samples of Puyallup caught fish are checked by tribal fisheries professional staff to determine hatchery and wild stock composition. For the 1979–80 steelhead fishery, the tribe took the initiative to close their fishery as soon as the samples showed significant numbers of wild fish in the catch. When this biological data was presented to the state biologists, they in turn closed the sport fishery as a conservation measure. In 1981, most of the tribal net fishery occurred in December. Based on scale analysis, most of the fish caught were hatchery origin fish. The sport fishery during that same month showed a ten percent higher composition of wild fish in the catch. This is not surprising as the sport fishery occurs further upstream closer to the natural spawning grounds.

Since tribal fisheries are based on hatchery reared fish, the Puyallup Nation has made major commitments for enhancing the species. In Spring 1981, the tribe released over 60,000 steelhead yearlings into the Puyallup River. This planting level represents approximately two thirds of the Game Department's recent annual planting levels for the Puyallup System. Based on current hatchery survival rates, these releases should contribute approximately 1,500 adult steelhead to both the Puyallup River treaty and sport fisheries in 1983. This number of adult steelhead produced from this tribal plant should exceed the total number of steelhead that was harvested by the Tribe in 1980–81. Because of budget constraints, the Game Department has indicated they will have to decrease their current hatchery steelhead production. It's possible that tribal steelhead production may surpass that of the state if the Game Department's budget problems continue. Unlike most species of salmon, steelhead require a minimum of one year to rear to obtain optimum release size. This results in considerable hatchery operations and maintenance expenses.

The loss of steelhead to the treaty commercial fisheries would impose severe hardships to southern Puget Sound tribes. These tribes have been forced into terminal fishing areas and are the last to harvest the salmon resource. By the time the fish reach the terminal areas, the market quality has deteriorated or the price has already dropped because markets have been flooded with northern caught fish. Fortunately, the steelhead retains excellent market qualities in terminal areas, are less susceptable to prior intercepting fisheries, and harvests occur during a time when quality fresh fish are a scarcity in the marketplace.

The loss of steelhead to treaty commercial fisheries would shorten an already short fishing season. Contrary to popular belief, Tribes are not fishing all of the time. Most of the salmon resource is harvested before they reach the Tribe's fishing grounds. Salmon runs destined for the Puyallup River must escape the coastal sport and commercial troll fisheries, Puget Sound Treaty and non-treaty Commercial net fisheries, the IPSFC fisheries in the Straits of Juan de Fuca, and the Puget Sound sport fisheries. Since 1975, the Puyallup Nation has fished an average of 32 days per year in the Puyallup River for all species of salmon (Table 1). Because of similar run timings between hatchery steelhead and natural Puyallup chum salmon, fishing days would be reduced by some twenty-five percent. Decommercialization of steelhead would mean not only the loss of steelhead, but probably the loss of additional species as well, such as, chum salmon and spring and summer chinook.

The State of Washington has interferred with the Tribe's right to fish steelhead through their judicial system. Treaty catches of steelhead in the Puyallup River have been far below the Supreme Court mandated treaty entitlement (Table 2). These low treaty steelhead catches since 1977 have been accompanied by extremely poor chum salmon runs in the Puyallup River. The Washington Department of Fisheries Progress Report No. 140 predicts that there will be only 800 harvestable chum salmon in the Puyallup River for the 1981–82 fishing season. This decline of chum salmon has been largely due to the destruction of the Puyallup River estuary which is now a highly industrialized Port area. Future fisheries enhancement efforts are likely to be more successful for steelhead, than for chum which are highly estuarine dependent. Without adequate harvests of chum salmon during the winter months, the Puyallup Nation has become increasingly more dependent upon their historical steelhead resources.

TABLE 1.—SUMMARY OF RECENT HISTORICAL TREATY FISHING DAYS IN THE PUYALLUP RIVER

Year	Total number of fishing days for all species	Year	Total number of fishing days for all species
1975–76	23	1978–79	38
1976–77	14	1979–80	[illegible]
1977–78	45	1980–81	45

TABLE 2.—COMPARISON OF TREATY AND SPORT STEELHEAD CATCHES IN THE PUYALLUP RIVER

Year	Sport catch	Treaty catch	Year	Sport catch	Treaty catch
1974–75	[1] 2, 335	2, 528	1978–79	2, 272	[2] 259
1975–76	[1] 1, 352	3, 928	1979–80	1, 977	[2] 43
1976–77	2, 544	1, 688	1980–81	971	1, 068
1977–78	3, 493	[2] 281			

[1] Estimates derived from punch cards which are considered less accurate than creel census derived estimates.

[2] Harvests limited to 45 percent of the wild fish (Washington Department of Game v. Puyallup Tribe).

At one time it was possible for the return of spring chinook to ameliorate some of this dependency. Since the construction of Mud Mountain Dam, the spring chinook run has been decimated. By denying returning spawning adults access to headwaters, this run is approaching extinction. The ability of the Puyallup Nation to rely on this portion of diversified resource has been lost. Puyallup fishers end up with less fish than was mandated or anticipated.

Contemporary Puyallup's continue to observe and appreciate the religious significance of winter salmon. The importance of this resource takes on increased value when understood in the context of its being one of the few ways of obtaining livelihood for the most indigent and underemployed segment of American society. Most Puyallup families are completely dependent on steelhead as a means of acquiring food to eat, either directly or as a source of funds for other necessary staples, during the winter months.

In summary, the Tribes have shown through their environmental and fisheries management that they are more effective in protecting the wild steelhead than any other group or resources agency. This is nothing new as the Tribes have been practicing conservation for centuries by living in harmony with the environment. Puyallup Nation fishers will continue to be dependent upon steelhead as a source of food and income during winter months. This dependency has become especially critical as most of the other species of salmonids are at such depressed levels, that no consistent harvest are allowed. The loss of steelhead harvest through abrogation, would impose extreme hardship on tribal fishers who would have to obtain their annual income during a short one month fishing season. The loss of this traditional fishery would be a further erosion of tribal culture and religious heritage, and the abrogation of treaties would seriously weaken the integrity of the United States government.

The Puyallup Nation opposes S. 874, which is erroneously entitled "The Steelhead Trout Protection Act."

Senator GORTON. Thank you.

In a moment, I will have to go on the Floor to vote, but please continue.

STATEMENT OF DOREEN M. SCHUYLER, FISHERIES MANAGER, UPPER SKAGIT TRIBE—Continued

Ms. SCHUYLER. I am Doreen Schuyler. I am a member of the Upper Skagit Tribe. I am here today on behalf of the Skagit System Cooperative, which is a fisheries management consortium, made up of the Swinomish Tribe Community, the Sauk-Suiattle Tribe, and the Upper Skagit Tribe.

The three tribes have usual and accustomed fishing areas on the Skagit River. The Skagit River is second only in size to the Columbia in the State of Washington and contributes one-third of the harvestable fishery in Puget Sound.

We are here today to testify in opposition of Senate bill 874, which is before you for consideration.

Mr. Chairman, the purpose of the Senate bill as stated by its drafters is to protect and preserve the steelhead resource.

The reasons set forth for the need of this legislation are: No. 1, Indian treaty fishing is destroying the steelhead resource; No. 2, that the value of the steelhead as a game fish is substantially greater than its cultural or commercial value; and, No. 3, that Senate bill 874 is needed to protect the steelhead resource.

I will focus mainly on the issue of whether the recreational value of steelhead as a game fish outweighs the cultural significance and the economic value within an Indian tribe and the issue of whether Indian treaty fishing is detrimental to the resource.

You have before you testimony from the Steelhead Sport Fisheries Group and the assessment of the monetary value of steelhead as a game or recreational fish.

We have no such monetary figure to submit to you on the economic or cultural value to the treaty tribes. But the economic and cultural value are inseparable and the ability to provide and maintain a meaningful way of life cannot be measured in dollars.

The harvesting of steelhead on the Skagit has, and continues to be, of significant importance to the continued existence and development of the Skagit Tribes.

Our ability to provide for one's family of our own efforts will substantially be reduced if this legislation is passed.

The steelhead are harvested during the winter months when the economic status of the tribal community is at its lowest ebb. In many instances steelhead provide the only source of fresh protein in the Indian family's diet.

To understand what this resource means to the tribal community, you must look at the economic status of the tribe. At least one-half of the membership of our tribes are either at or below poverty level. The treaty fisheries resource provides most of that income or contributes largely to it.

Many tribes, such as ours, are using the fisheries resource as a means of upgrading the standard of living in our communities, and to decrease our dependence on Federal and State social service programs.

The efforts of the tribes to move toward self-sufficiency should be encouraged by Congress by nonpassage of this bill. The need and importance of congressional support for tribal self-determination has long been established.

Senator GORTON. I am sorry. I will have to interrupt you at this point. I will have to go vote.

We will be in recess for approximately 15 minutes. We will then be able to finish up the panel's testimony promptly.

[Recess taken.]

Senator COHEN [presiding]. The committee will resume its deliberations.

Please continue, Ms. Schuyler.

Ms. SCHUYLER. Mr. Chairman, I will back up just a moment.

Senator COHEN. Take your time and proceed.

Ms. SCHUYLER. As I stated earlier, many tribes such as ours, are using the fisheries resources to upgrade the standard of living in our communities and to decrease the dependency on the Federal and State social service programs.

The efforts of the tribes to move toward self-sufficincy should be encouraged by Congress by nonpassage of this bill. The need and the importance of congressional support for tribal self-determination has long been established.

To now enact a statute that will in part remove a portion of the few vehicles available to tribes to obtain self-sufficiency, would be a reversal of that policy.

As for the issue of whether Indian fishing is destroying the resource, the statement should be to the contrary. The reassumption of treaty fishing, if anything, has been beneficial to the resource.

Regulation and management of the resource is now founded on the basis of protecting and enhancing the salmon and steelhead runs. The efforts of the tribes in this management include working on the Skagit with Seattle City Light in developing flows for the hydro projects that will protect the fishing resource.

In addition, the tribes on the Skagit River base their harvest of steelhead solely on the estimated escapement from the Barnaby Slough facility.

Therefore, we do not target the natural runs.

In addition to that, I would like to state that the tribes have worked cooperatively with the department of game in joint patrols and that the tribal fishery is probably the most regulated fishery in the history of the State.

I would like to conclude by saying that I have seen nothing introduced that this legislation is needed to conserve the resource. It simply allocates the resource to a specific user group.

If there truly is a conservation issue, then all parties should be removed from fishing on the steelhead resource.

I would ask that my prepared statement be placed in the record.

Senator Cohen. Without objection, it will be placed in the record at this point.

[The prepared testimony follows. Oral testimony resumes on p. 197.]

Joint Testimony of The Swinomish Tribal Community; The Upper Skagit Indian Tribe; and The Sauk-Suiattle Indian Tribe

INTRODUCTION

This document is submitted on behalf of Skagit System Cooperative (S.S.C.) in opposition of Senate Bill S.874. The S.S.C. is a Tribal Fisheries Management consortium comprised of and created by the Swinomish Tribal Community, the Sauk-Suiattle Indian Tribe, and the Upper Skagit Indian Tribe. The three Tribes possess, share and exercise treaty rights on the Skagit River. The Skagit River System is second only in size to the Columbia. Tributaries include the Baker, Cascade, Suiattle and Sauk Rivers. The Skagit is a major producer of Native Pacific Salmon and Steelhead trout, and contributes one-third of all wild salmon produced in the Puget Sound.

ISSUES

The proposed Steelhead Trout Protection Act under consideration is a deliberate attempt to destroy the treaty fishing rights of such Tribes as S.S.C. Though the intent and purpose of the legislation as stated by its sponsors is to protect Steelhead, the true purpose must and can be revealed by examining the fallacies given for the need of the legislation. Those are:

1. Indian Treaty Fishing is destroying the Steelhead resource.
2. That the value of Steelhead as a game fish is substantially greater than its cultural or commercial value.
3. That Senate Bill S.874 is needed to protect the Steelhead resource.

The method to be used to abrogate the Tribe's Treaty Rights is clear from reading the Bill—to allocate an entire specie of fish, Steelhead, to the sport user group.

INDIAN TREATY FISHING ON THE SKAGIT

The Skagit River has and continues to be referenced by sportsman organizations as an example that proves that Indian fishing is destroying the Salmon and Steelhead resources. Citing the prominent place that the Skagit River had as one of the State's greatest producers of sport-caught Steelhead, anglers blame their recent declining success on the resumption of Indian Treaty Fishing for Steelhead.

Understanding the status of the Skagit Steelhead resource requires a historical perspective. Following 1948 when the State's sport catch reporting system was initiated, the catch increased steadily until it reached a relatively stable level during the period from the mid 1950's to 1968. This was a time in which intensive sport fishing effort occurred on the Skagit River with increasing use of guides and boats. During this period, the Skagit consistently ranked highest in the State in sport Steelhead harvest, except for the Columbia River. It should be noted that this was also a period of time when treaty fishing was minimal because Tribes were prevented from exercising their fishing rights by discriminating regulations promulgated by the State of Washington and physical harassment by sportsmen and Game Enforcement.

The accompanying graph, Attachment A, reflects the sport harvest for this period. Harvest was low in 1947 at 2,200 Steelhead, trending upward to a 1964 peak of more than 20,000. Prior to the decision in *U.S.* v. *Wash.* there was no limit on the number of Steelhead that could be harvested annually. Subsequently, the Steelhead sport effort on the Skagit River was allowed to grow virtually unchecked. To meet the increased sport demand, the Washington Department of Game in the early 50's, began stocking the Skagit River with hatchery-produced smolts.

The State's Steelhead enhancement efforts on the Skagit River continued to increase and the Barnaby Slough rearing facility was put into operation in the early 60's. After 1968, the sport catch dropped precipitously until it reached a low of approximately 1200 fish during 1976–77 season. Even with the massive stocking of hatchery Steelhead, the overall decline of the Skagit Steelhead population was not prevented, Attachment B. It should be noted here that the declining trend of sport catches in the Skagit River was obvious well in advance of the resumption of Treaty Indians fishing for Steelhead in 1974 and that Treaty Indian Steelhead harvest from 1935 to 1963 averaged 724 fish annually.

In 1974–75, the first year of implementing *U.S.* v. *Wash*, the Treaty harvest of Steelhead on the Skagit River was substantially greater than the sport harvest. Reasons for the magnitude of the harvest was the availability of reliable information, either from State Department of Game or the United States Fish and Wildlife Service to predict the run size and the occurrence of favorable commercial fishing conditions. The Tribes recognize the difficulty of accurately predicting Steelhead run sizes, and have therefore developed their own technical capabilities to assist the Game Department. Even though the task of managing the Steelhead resource has some difficulties, it is made even more so by having two state management agencies, Department of Game and Department of Fisheries, with possibly competing interests, managing fish stocks that pass through the same water at the same time.

The Treaty Steelhead Fishery on the Skagit River is managed to provide the utmost protection and the perpetuation of the native Steelhead population. The Treaty Fishery for Steelhead is based on the estimated hatchery surplus for each run. The Tribes rely on the Department of Game hatchery release numbers from its Barnaby Slough facility, to provide this information. Those releases, having initially good returns, now appear to have a declining survival rate.

The decline of native Steelhead in the Skagit River is a classic example of a fishery that is allowed to develop in the absence of adequate regulation controls. As fishing pressure on catch increased, the resource was subjected to an extended period of intensive exploitation, three (3) cycles. The wild stocks of Steelhead so highly prized by the sportsmen could evidently not sustain their productivity under twelve successive years of exploitation by the sport fishery.

There are other factors besides sport fishing that may have contributed to the apparent decline of Steelhead in the Skagit River, general deterioration of freshwater habitat, Hydro power operations and logging practices in the Skagit Basin. If the Skagit Steelhead Fishery is looked at in its entirety, harvest, environment-management practices, treaty fishing cannot be considered to be the cause of the decline of the Skagit Steelhead resource. We need to recognize and admit, that Steelhead were in jeopardy years before the land mark decision in *U.S.* v. *Wash*.

CULTURAL AND ECONOMIC VALUE OF STEELHEAD

The cultural significance of Skagit Steelhead cannot be ignored. Because Steelhead do not die after spawning, and return to spawn again and again, they are associated with everlasting life and everlasting food. They are revered in stories passed down through the generations.

Steelhead also were a critical part of the Annual Round—the cycle of living, livelihood and travel that were the traditional Skagit Indian existence. The Annual Round included travel to the high mountains in August for berries and game; to the Puget Sound in late Spring for shellfish; and to the upper falls during other seasons for Salmon and Steelhead.

Steelhead were the focal point of the Winter phase of the Annual Round. Between November and May, no other fresh salmon are plentiful, and game and edible plants are scarce. In many lean years, Steelhead provided the main source of food and barter until the Spring bloom of plant and animals. The ability to barter fresh Steelhead for other necessities of life meant the difference between survival and non-existence.

In today's Annual Round, Skagit Steelhead are no less important to a Tribal commercial fisherman than they were to that fisherman's ancestors. Because of the seasonal nature of most employment in the Skagit Valley, the Steelhead caught during the Winter by the Tribal commercial fishermen may mean the difference between a comfortable or a cold winter. A Tribally-sponsored study of Skagit River treaty fishing showed the average gross income of active Upper Skagit Tribal fishing households in 1978 was at poverty level. Steelhead are a major contributor toward this income.

The argument that selling Steelhead for money has no cultural basis is wholly unfounded. The only difference between bartering a Steelhead for a blanket, and selling a Steelhead for money with which to buy a blanket is the method of exchange. Value as a commercial resource is vital to the continued exercise of treaty fishing.

Further, we reject the contention that tribes may realize greater economic value from licensing Steelhead sport fishing on tribal lands. The majority of reservations are removed from prime Steelhead waters—indeed, reservations such as Upper Skagit's are miles from the river.

We cannot imagine how a Steelhead sport fisherman, given the choice to fish 99 miles of state-controlled river, would purchase a separate license for the opportunity to fish on Indian land. In fact, tribes have always had the authority to license sport fisheries on their reservations and some tribes do.

S. 874 NOT NEEDED TO PROTECT STEELHEAD

We believe you must share with us the only logical conclusion we can reach after examining the facts.

1. Steelhead were a threatened resource years before the Boldt Decision. Exploitation, poor management and habitat destruction began the decline of Steelhead many decades ago.
2. With responsible management practices and habitat protection, the Steelhead resource can and will survive.
3. The recreational value of Steelhead as a game fish is clearly inferior to the tribes cultural values.
4. Commercial Steelhead fishing is vital and necessary to the survival of the Tribal culture and economy; and
5. Tribes will not substantially benefit from Steelhead sport licensing on Indian lands.

It is clear that the Steelhead resource will not be better protected as a result of Senate Bill S. 874. Only adherence to good management principles and existing law, including the law as interpreted in *U.S. v. Wash.* is needed to insure the continued vitality of Steelhead, and those who depend on a healthy Steelhead resource.

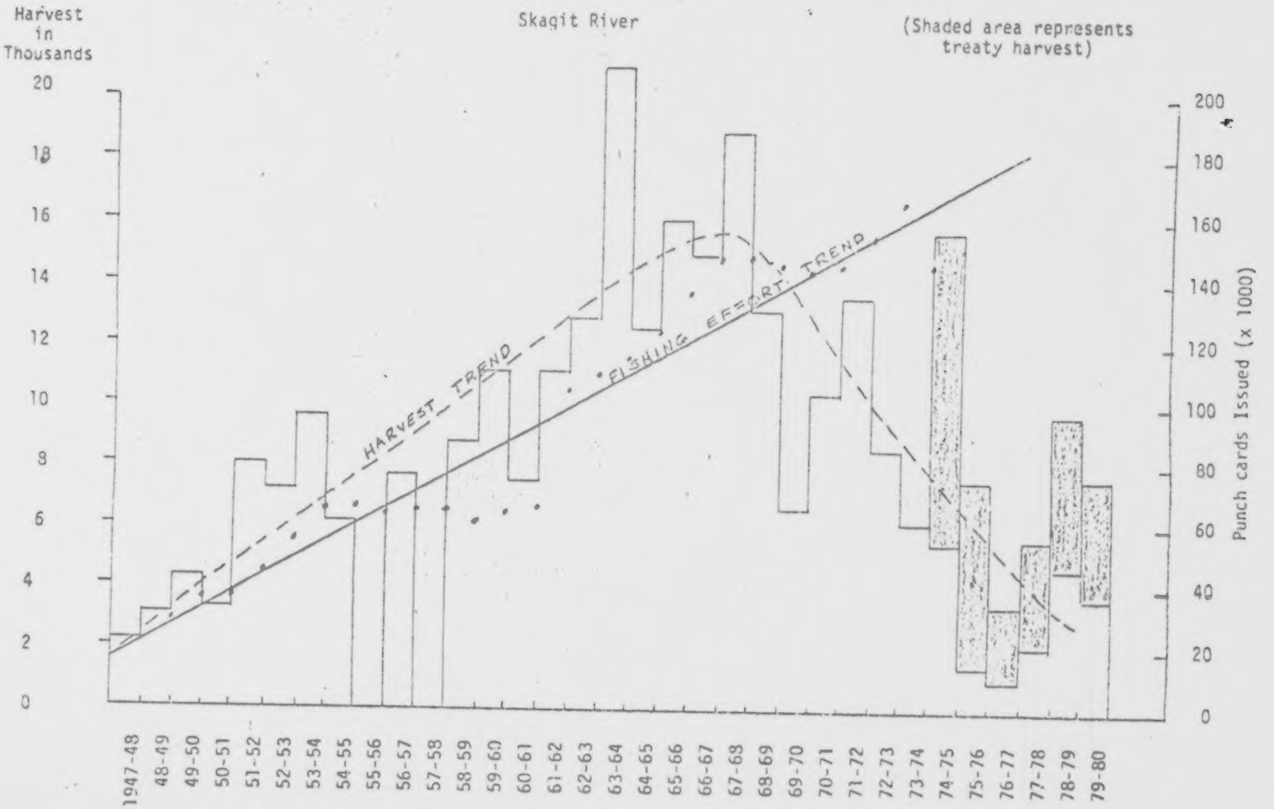
ATTACHMENT A

Source: 1947-1980-Washington Department of
Game summaries of Steelhead
Sport Catches in Washington.

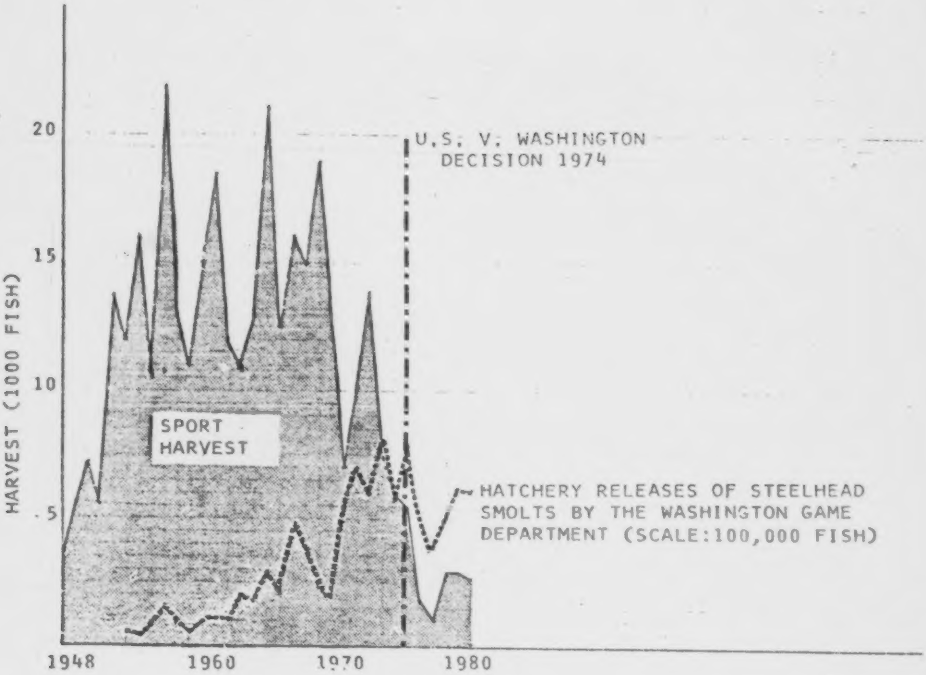
ESTIMATED ANNUAL STEELHEAD HARVEST

Skagit River

(Shaded area represents
treaty harvest)



ATTACHMENT B



SKAGIT RIVER STEELHEAD CATCH HISTORY

Source: Catch Data:

1948-77 Meyers, J., 1977. Report to the Regional Task Force of the Presidential Task Force on Northwest Fisheries Problems Concerning Steelhead, U.S. Fish & Wildlife Service, Fisheries Assistance Office, Olympia.

1978-80 Washington Department of Game Summaries of Steelhead Sport Catches in Washington.

Hatchery Release Data:

1952-76 Waknitz, W., C. Mahnken, and J. Meyers, 1977. Report to the Regional Task Force of the Presidential Task Force on Northwest Fisheries Problems Concerning Salmon and Steelhead Production from the Boldt Case Area from 1952-76.

1977-78 Washington Department of Game Pre-Season Run Projections.

Senator COHEN. Thank you very much.

I assume any questions that Senator Gorton will have he can ask when he comes back or he can submit them in writing.

But we will now move on to our next panel.

We now have the Columbia River Inter-Tribal Fish Commission. We will have a substitute for Mr. Gary Kimble. Perhaps each of you prior to addressing the committee could just identify yourselves and the tribe on whose behalf you are speaking.

Mr. Dompier?

PANEL: STATEMENTS OF DOUGLAS W. DOMPIER, DIRECTOR, FISHERIES TECHNICAL SERVICES, COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION; HAROLD CULPUS, WARM SPRINGS TRIBE; NELSON WALLULATUM, CHIEF, WASCO TRIBE; N. KATHRYN BRIGHAM, UMATILIA TRIBE; ALLEN PINKHAM, NEZ PERCE TRIBE; LEVI GEORGE, YAKIMA INDIAN NATION; AND WILLIAM YALLUP, YAKIMA INDIAN NATION

Mr. DOMPIER. Thank you, Mr. Chairman.

Mr. Chairman, my name is Doug Dompier. I am the director of the technical fishery services for the Columbia River Inter-Tribal Fish Commission.

The tribal members who will be testifying here today, starting on my far left, are Harold Culpus from the Warm Springs Tribe. Next to him is Nelson Wallulatum, chief of the Wasco Tribe.

To my left is Mrs. Kathryn Brigham from the Umatilla Tribe and to my right is Mr. Allen Pinkham of the Nez Perce Tribe of Idaho.

To his right is Levi George of the Yakima Indian Nation, and to his right is William Gallup of the Yakima Indian Nation.

We would like to follow the following format and have the Warm Springs Tribe testify first. They have to catch an airplane and may have to leave.

Senator COHEN. Rest assured that your statements will be put in the record. We will certainly take a look at them.

Mr. Wallulatum?

STATEMENT OF NELSON WALLULATUM, CHIEF, WASCO TRIBE

Mr. WALLULATUM. Thank you, Mr. Chairman.

My name is Nelson Wallulatum. I am chief of the Wasco Tribe, one of three confederated tribes of the Warm Springs Reservation of Oregon.

I am also a member of the Warm Springs Tribal Council. I am here today to speak on behalf of the Warm Springs Tribe in opposition to Senate bill 874, the Steelhead Trout Protection Act.

Mr. Chairman and members of the committee, the steelhead resource does not need protection. In the Columbia River basin above Bonneville Dam where the Warm Springs Tribe and the other treaty tribes exercise their treaty secured fishing rights, the steelhead run is by far the strongest and healthiest of all the anadromous fish runs.

The "A" section of the 1981 summer steelhead run destined for the rivers and streams of eastern Oregon, eastern Washington, and Idaho, was nearly 50 percent larger than in 1980.

Next year's run is expected to be even larger. These fish simply are not in danger and do not need the protection this bill claims to provide.

The Warm Springs Tribe has a special reason for opposing this bill. We believe that we have done more than our share to protect and enhance the strong Columbia River summer steelhead run. Let me explain to you what I mean.

The Warm Springs Reservation occupies the east slope of the Oregon Cascades, stretching from the crest of the range in the west to the Deschutes River on the east.

The Deschutes River is not simply the border of the Warm Springs Reservation. It is part of the Reservation. The tribe's territory extends to the middle of the stream.

More importantly, the treaty of 1855 reserves for our people exclusive fishing rights in the Deschutes River. The Deschutes, therefore, is not an off-reservation stream where we must share our reserved fishing rights "in common" with other citizens.

I mention the Deschutes River because it has earned the reputation as one of the great sports fishing streams of the American West. It is regarded as a particularly outstanding steelhead stream and over the last 10 years has led the State of Oregon in the numbers of steelhead caught by sportsmen.

The Warm Springs Tribe has made two major contributions to the success of the Deschutes River as a sports fishing stream. First, the Warm Springs Tribe has, up to now, never asserted the exclusiveness of our treaty-reserve fishing rights in the Deschutes River.

We have always extended to non-Indian sports fishermen the privilege of fishing in the river which the treaty of 1855 reserved exclusively to us. The Steelhead Trout Protection Act seems like a very poor way to thank us for this courtesy.

The second contribution made by the Warm Springs Tribe to the Deschutes River sports fishery is an important one: We produce most of the fish. There is 40 miles of excellent steelhead spawning area along the Deschutes River itself where it borders the reservation.

The tribe does its very best to protect this natural habitat from damage by an increasingly large number of recreational boaters, campers, and sports fishermen.

In addition, Deschutes River tributaries on the reservation such as the Warm Springs river system and Shitike Creek provide an additional 80 miles of steelhead spawning habitat.

We believe that well over one-half of the wild steelhead in the Deschutes River system are produced on the Warm Springs Reservation. It is the tribe's policy to increase this natural production by pursuing an aggresive policy of habitat improvement and by possibly using outplants from our own fish hatchery on the Warm Springs River.

Combining the reservation's natural production with the large number of hatchery fish produced by the Warm Springs and Round Butte hatcheries on the reservation, it is obvious that the famed Deschutes River steelhead is really the Warm Springs Indian steelhead.

The Warm Springs Tribe believes that the sports fishermen in our area know and understand the tribe's crucial role in the protection and enhancement of the Deschutes River steelhead.

Because of this, we are convinced there is little support among the sports fishermen of our area for this bill.

Recently, a Portland television station broadcast a public affairs program concerning Indian treaty fishing rights from the fishing community of Astoria, Oreg., at the mouth of the Columbia River.

I attended this meeting, together with other representatives of the Columbia River treaty tribes. Also in attendance were ocean trollers, non-Indian Columbia River gill netters, representatives of the ocean charter boat industry, and sports fishermen of every description.

Several times during the program the moderator asked if someone in the audience would speak on behalf of the Steelhead Trout Protection Act. No one would.

In frustration, the moderator finally asked if there was anyone in the audience who supported the bill. No one said a word.

If a well-publicized meeting in Astoria, Oreg. of all points of view on the question of Indian treaty fishing rights fails to attract a single person in favor of the Steelhead Trout Protection Act, I have to ask myself why the sponsors of this legislation felt compelled to introduce it.

Although this observation has nothing to do with the rightness or wrongness of the bill, I sincerely doubt that in the State of Oregon the Steelhead Trout Protection Act has the political support of those sportsmen it is supposed to help.

Aside from the fact that the Steelhead Trout Protection Act, senselessly and at great expense, aims to protect a run of fish that do not need protection, the Warm Springs Tribe has another reason for opposing this bill. This legislation is simply and plainly unfair. This bill is a taking and a giving. It takes steelhead from the treaty tribes of the Pacific Northwest and gives them to non-Indian sports fishermen.

In the process, the bill abrogates the treaty rights of the Indian people and destroys an important aspect of our way of life.

This legislation has nothing to do with the protection and conservation of the steelhead resource. It has everything to do with taking, and, therefore, destroying, something priceless to the Indian people and giving it to a handful of sportsmen. It does not become this committee nor does it enhance the stature of the U.S. Senate to consider such a fundamentally unfair piece of legislation.

I respectfully urge the committee to defeat this bill.

Thank you.

Senator COHEN. Thank you very much.

Mr. Pinkham?

STATEMENT OF ALLEN V. PINKHAM, MEMBER, TRIBAL EXECUTIVE COMMITTEE, NEZ PERCE TRIBE

Mr. PINKHAM. Thank you, Mr. Chairman.

My name is Allen V. Pinkham. I am a member of the Nez Perce Tribal Executive Committee and the treasurer of that committee.

I am here to testify in opposition to the steelhead decommercialization bill, S. 874.

The treaty of 1855 reserves the exclusive right of the Nez Perce people to fish in all usual and accustomed places, on or off the reservation. The treaty also retains the right to fish in common with non-Indians in all rivers and waters.

Court decisions have upheld our right to net fish for steelhead for commercial purposes free from State jurisdiction. This right to fish cannot be compensated for by any amount of money.

Mr. Bonker and Mr. Gorton, you have grossly misinterpreted the treaty rights of we Indians in the Northwest. You say we can still make a moderate standard of living by fishing for salmon under our treaty share. This is not so. The steelhead trout still contributes to our tribal economics, religious, and cultural practices. Also, the salmon runs in the Columbia River have shown a drastic decline over the past few years. And we cannot catch salmon if they are not there in the rivers to catch.

The Northwest tribes are concerned about the management and enhancement of the salmon and steelhead runs and fisheries. The tribes want to help co-manage and establish a government-to-government relationship with the various entities involved with the fisheries on the Columbia River system and the coastal waters up to Alaska. The tribes need input to help increase the valuable Columbia River salmon and steelhead stocks.

I would ask that the biological statement of the Nez Perce Tribe be included in the record.

Senator COHEN. Without objection, it will be inserted in the record following your testimony.

Mr. PINKHAM. In June of 1980, the Nez Perce Tribe had a confrontation with the State of Idaho over the tribal fishery on Rapid River near Riggins, Idaho. Thirty-three citations were issued by the State to tribal members for fishing during a State-imposed closure.

This was an illegal act by the State and infringed upon our tribal sovereignty. The State of Idaho issued these citations under arms and marched in military formations. Violence was diverted because of the peacefulness of the Nez Perce fishermen.

After many months of the State courts' inability to press their charges on the tribal fishermen, the judge dismissed the 33 cases. These citations were a direct violation of the Nez Perce Treaty of 1855. I cite this confrontation because we are always defending our treaty rights.

To end on a more positive note, the Nez Perce Tribal Council negotiated with the Idaho State Fish and Game Department to help regulate the Indian fishery on Rapid River during the 1981 spring chinook run.

In conclusion, the Nez Perce Tribal Executive Committee feels that there is no justifiable reason for the passage of the steelhead decommercialization bill and that it is a gross violation of our treaty.

Thank you for your consideration.

[The biological statement follows:]

BIOLOGICAL STATEMENT OF NEZ PERCE TRIBAL EXECUTIVE COMMITTEE ON LEGISLATION TO DECOMMERCIALIZE STEELHEAD TROUT

Historically, the annual run of salmon and steelhead to the Clearwater River and its tributaries has been estimated as 300,000 fish. Due to the cumulative impacts of excessive ocean harvest, dam related mortalities of downstream migrating smolts at the series of Columbia and Snake River dams, and spawning and nursery habitat degradation involving dewatering (via irrigation withdrawals), channelization, sedimentation and the denuding of stream bank vegetation resulting in high summer water temperatures, runs of anadromous salmonids in the Columbia River Basin are severely reduced from historical levels. Although virtually all stocks of anadromous salmonids which reach the Upper Columbia Basin are reduced, steelhead have been less affected than Pacific salmon. However, steelhead runs to the Upper Columbia are still diminished from historical levels which is significant since historically fifty-five percent (55%) of all Columbia River steelhead originated in Idaho waters, notably the Clearwater and Salmon River systems. The four Treaty Tribes (Nez Perce, Umatilla, Warm Springs and Yakima) have made a concerted and successful effort to reduce their harvest of steelhead.

Currently, considerable effort has focused on increasing the runs of anadromous salmonids to the Idaho headwaters. The Lower Snake River Fish and Wildlife Compensation Plan includes new hatcheries, enlargements of existing stations and new satellite rearing stations. Productions at these facilities would result in additional smolt releases of 9,160,000 fall chinook, 6,750,000 spring and summer chinook salmon, and 11,020,000 steelheads. Within the Nez Perce Reservation itself two (2) major hatcheries are operated by the U.S. Fish and Wildlife Service, Dworshak National Fish Hatchery on the North Fork of the Clearwater River, which is the largest steelhead hatchery in the world which will soon produce 2.9 million steelhead smolts annually, and the Kooskia Hatchery on Clear Creek which produces 800,000 spring chinook salmon. To withstand both dam mortalities and commercial and recreational harvests virtually all of these facilities and their respective fish production are needed to supply the Upper Columbia River system with sufficient numbers of anadromous salmonids. Yet funds have been withdrawn from the 1982 federal budget.

The Nez Perce Tribe has always viewed their role as co-managers of the natural resources within their reservation and ceded area boundaries. Recently, because of the depressed nature of anadromous salmonid stocks to the Idaho headwaters the Nez Perce Tribe initiated a Fisheries Resource Management Program with professional staffiing. As co-managers of the fisheries resources within the 13.2 million acre ceded area which encompasses portions of Idaho, Oregon and Washington the Nez Perce will actively pursue a program of enhancement and restoration of anadromous salmonids and will critically evaluate all projects and land use practices which may impact upon the fisheries resource. In recent years the Nez Perce Tribe has had studies carried out on reservation streams examining the potential of a steelhead hatchery and also the suitability of Lapwai Creek as a spawning and nursery stream for anadromous salmonids. Also, as co-managers of the fisheries resource within their reservation and ceded area the Nez Perce have set tribal fishing seasons for steelhead for the 75 miles of the Clearwater River which flows within the reservation and have prohibited tribal fishing at Rapid River until the hatchery had its quota of 2,700 spring chinook salmon in 1981.

The field activities of the Fisheries Resource Management Program of the Nez Perce Tribe will initially focus on the streams and rivers (over 300 miles) within the 756,000 acre reservation. Due to the present status of most reservation streams the Nez Perce will probably focus most attention on the restoration of steelhead because its life history pattern appears to be the most biologically compatible for enhancement. The tribal fisheries staff will be examining streams for possible restoration and enhancement, and increasing production from reservation streams and rivers by means of netart boxes, spawning channels and a satellite hatchery facility at the Old Hatchery Spring on Lapwai Creek. Virtually all of these procedures will be evaluated in terms of steelhead production along with possibly spring chinook salmon.

An increase in steelhead production from a headwater region of the Columbia River drainage such as the Nez Perce Reservation will benefit both Indian and Non-Indian fisheries in the mainstem Columbia, Snake and Clearwater Rivers. In addition it will also provide the intrinsic cultural benefits that steelhead, along with salmon, have historically provided to Indian people.

Senator COHEN. Thank you.

Mr. Yallup?

STATEMENT OF WILLIAM YALLUP, CHAIRMAN, FISH AND WILDLIFE COMMITTEE, TRIBAL COUNCIL, YAKIMA INDIAN NATION

Mr. YALLUP. Thank you, Mr. Chairman.

My name is William Yallup. I am the chairman of the Fish and Wildlife Committee of the Tribal Council of the Yakima Indian Nation. I have served on the Tribal Council for 12 years.

I would like to properly introduce myself to the members of the committee so you will know exactly where I come from. My Indian name is Chow-Wow-Yat-Wuckt. My great-grandfather resided around the Pasco, Wash., area, up the Columbia toward Wenatchee.

My grandfather, whom I am named after, William Yallup, came from central Columbia around Arlington, Oreg. So my background is pretty much in the Columbia River area.

I welcome this opportunity to address the committee on behalf of the Yakima Indian Nation. The Yakima Nation testified before this committee at its Seattle hearings and I would request that our testimony at that proceeding be included as a portion of the record here as well.

Senator COHEN. Without objection, that will appear in the record following your oral testimony.

Mr. YALLUP. The Yakima Tribe resides on its 1.3 million acre reservation located in central Washington. The reservation was reserved by the Yakimas in our treaty of 1855.

The Yakima people have always relied heavily upon the fishery resource for their subsistence and livelihood. In spite of greatly decreased runs of all species, the 7,000 members of the Yakima Tribe still depend upon fish to sustain our cultural, religious, and economic well-being. Fish is no less important to my people today than it was in 1855 and thousands of years prior to that.

You may notice that I use only the word "fish" in discussing this issue. I do that because the Indian people treat all species of anadromous fish, including steelhead, simply as "fish," which were placed on Earth by the Creator to be used by His people.

Senate bill 874, and the publicity surrounding it, attempt to lead to the conclusion that the steelhead is an endangered species and that it got that way only due to treaty fishing rights and that Indian people do not care about the resource.

It further implies that salmon are so plentiful that treaty people do not need to harvest steelhead, but do so only out of greed. Nothing could be further from the truth.

First of all, it cannot be denied that all species of fish in the Columbia River system are less abundant than they were in previous years.

How did they come to be in that condition? Primarily due to three factors: One, overharvest by ocean fisheries; two, damming of the Columbia River system; and, three, environmental degradation of the Columbia and its tributaries.

Not even the harshest critics of treaty fishing rights can say that overfishing by treaty Indians has caused the decline of Columbia River fishery resources.

The committee should be aware, however, that it is the salmon resource which is in the most drastic decline on the Columbia River. All salmon species are now dwindling.

A classic example is the fall chinook. The 1976 run totaled over 300,000 fish at Bonneville Dam after a non-Indian harvest of approximately 100,000 fish.

The run has been in decline until this year. It will be no more than 160,000 at Bonneville Dam, with no non-Indian harvest occurring.

In 5 years, the run has declined from over 400,000 to less than 160,000. The Indian fisherman has seen his seasons reduced from an average of 54 days from 1968 to 1977 to only 8 days in 1981.

The non-Indian received no in-river season this year, due to excessive non-Indian ocean harvests. Contrast this to the trend in the steelhead run. This year counts at Bonneville Dam have been far above average, and the run appears to be one of the best in years.

The 1981 run will substantially exceed the 43-year average that has been kept since counting was started at Bonneville Dam in 1938. The run to date totals more than 150,000 steelhead, with more than a month left in the run.

As the charts that have been prepared by our biological staff illustrate, steelhead present the only bright spot in the Columbia River fishery picture. Steelhead, in fact, are on the increase in the Columbia system. Sports fisheries on Columbia River runs have been and will continue to be extremely successful. Forecasts for the 1982 run are that it will exceed 1981.

Proponents of the bill contend that continued tribal harvests will destroy the steelhead runs. Columbia River tribes, in our 5-year management plan, agreed to limit our harvest of steelhead in return for the promise of increased salmon runs.

What has happened? The tribes have kept their promise, limiting their harvests to approximately 5,000 in 1981, representing a continuous yearly reduction from a high of 31,700 in 1977.

This reduction has been made in good faith by the tribes in anticipation of the other parties keeping their word. In return, the salmon resource has not been returned to the tribes. Harvests have steadily declined from 140,000 in 1976 to approximately 30,000 in 1981.

Proponents of this bill wish to sweep these facts under the rug. They do not want this committee to see what has happened to the Indian people under an agreement which the Indians kept but which was broken by the other parties.

It has resulted in the Indians being deprived of a viable, healthy resource: steelhead. And, being forced to reduce their harvests of salmon—precisely the opposite of what was promised. Passage of this bill will result in the same deplorable situation for the Indian people of the Columbia system.

Proponents of the bill imply that the Indian people only harvest fish and do nothing for the resource. Once again nothing could be further from the truth.

The Yakima Nation has, for many years, been a leader in opposing the environmental degradation of the Columbia system. At the present time, the Yakima Nation is involved in four Federal district court cases and 21 proceedings before the Federal Energy Regulatory Commission which directly involve protection of the steelhead resource. All the other Columbia River tribes are also directly involved in such actions.

The Yakima Nation and the Columbia River Inter-Tribal Fish Commission were the driving forces in the fishery amendments incorporated in the recently-passed Bonneville Power Act. The Yakima Nation has actively pursued passage of the Bumping Lake enlargement project, a project designed to augment streamflows in the Yakima River and to produce a large number of steelhead.

The Yakima Nation has actively pursued implementation of the Army Corps of Engineers Lower Snake River compensation plan, a plan designed to mitigate for steelhead losses in the Snake River.

The Yakima Nation has committed not only its time, but also substantial sums of money to vigorously pursue the continued existence of steelhead in the Columbia system.

The proponents of this bill, the alleged "conservationist sportsmen" of the State of Washington, have been conspicuously absent from the arena where the real battles for Columbia River fishery survival is being fought.

Instead of raising money to assist the Yakimas and other tribes in their efforts to preserve the Columbia River fisheries for all users, they instead have raised their funds to pay for lobbyists to take a portion of the resource and reserve it for a small minority special interest group.

Do not be fooled. The proponents of this bill are not conservationists. They want this resource reserved to them only so that their harvests will be increased.

This bill does not give the Yakima Nation anything that it does not already possess. The Yakima Nation in 1855 retained exclusive jurisdiction over fishing on its reservation. The Yakima Nation, for many years, has regulated fishing on the reservation through a permit system. The funds from this system go toward the enhancement of the fisheries.

An active non-Indian steelhead fishery already exists on the Yakima Reservation pursuant to this system, and this bill will add nothing. Instead, it will illegally and unconstitutionally deprive the Yakima Nation of its treaty reserved right to harvest steelhead.

The facts presented to this committee clearly demonstrate that this bill has no biological justification. What is even more clear is that it cannot be justified morally.

This bill asks the Congress of the United States to decide that our Creator put the steelhead on Earth solely for the use of the non-Indian sportsmen, even though the Indians have harvested this fish for thousands of years before the white man set foot on these shores.

One hundred twenty-six years ago at the treaty grounds in Walla Walla, the leaders of our two nations entered into a solemn agreement which was ratified by the Senate and signed by the President as a treaty with the Yakima Nation.

Governor Stevens at the treaty grounds at Walla Walla, in 1855, told Chief Kamiakin of the Yakimas:

> The Indians will be allowed to take fish from them at the usual fishing places and this promise will be kept by the Americans as long as the sun shines, as long as the mountains stand, and as long as the rivers run.

Kamiakin replied:

> I have been afraid of the whiteman, their doings are different from ours. Your chiefs are good, perhaps you have spoken straight, that your children will do what is right. Let them do as they have promised. This is all I have to say.

Gentlemen, the sun still shines, the mountains still stand, and the rivers still run. Will you now allow the solemn word of this Nation to be broken, and prevent my people from taking their fish as was promised? Will this American Congress decide that the Creator put the steelhead on Earth solely for the use of sportsmen?

This Nation has an unfortunate history of failing in its word to the Indian people. I urge you not to write another chapter in that sad story by dignifying this attempt to break our treaty by giving it your vote.

I ask you to see that this bill goes no further.

I would ask that the testimony of Harold Culpus, chairman of the Columbia River Inter-Tribal Fish Commission and a member of the Warm Springs Tribal Council be placed in the record.

Senator COHEN. Thank you. Without objection, it will be inserted in the record at this point.

[The prepared statements follow:]

PREPARED STATEMENT OF JOHNSON MENINICK, YAKIMA INDIAN NATION

My name is Johnson Meninick and I am the chairman of the Tribal Council of the Confederated Tribes and Bands of the Yakima Indian Nation. I have chosen to speak not of the technical aspects of this bill, but instead to speak from my heart on this issue.

Before I proceed with the remainder of my testimony, I wish to make it clear that the Yakima Indian Nation totally opposes each and every section of this bill and the concept for which it appears to stand. I have attached to this testimony a document outlining specific constitutional and biological problems with this legislation.

Today, my heart is heavy to learn that this legislation is a direct abrogation of our treaty. One hundred twenty-six years ago at the treaty grounds in Walla Walla, the leaders of our two nations entered into a solemn agreement which was ratified by the Senate and signed by the President as a Treaty with the Yakima Nation.

Governor Stevens at the Treaty Grounds at Walla Walla in 1855 told Chief Kamiakin of the Yakimas: "The Indians will be allowed to take fish from them at the usual fishing places and this promise will be kept by the Americans as long as the sun shines, as long as the mountains stand, and as long as the rivers run."

Kamiakin replied: "I have been afraid of the whiteman, their doings are different from our, your chiefs are good, perhaps you have spoken straight, that your children will do what is right. Let them do as they have promised. This is all I have to say."

The Yakima Nation has always considered this treaty to be the Supreme Law of the United States and of the Yakima Indian Nation. This Treaty guides our daily lives and forms the basis of our government, under the benevolent wardship of the United States. Over 11 million acres of prime timber and cropland was acquired by the United States under the Agreement. My people have been removed from their homelands and placed on a reservation where they now reside. To this day the Yakima Nation has honored its portion of this agreement. All that was asked in return was that the United States keep its word, as my Nation has done.

It is evident that the United States cannot make the same claim. The shame of this Nation and the State that you gentlemen represent, is well documened in broken treaties stretching through history. The United States took our land and moved us to our reservation, guaranteeing us our way of life hereditarily and in the future, yet dams, irrigation projects, logging practices, and non-Indian harvests have destroyed our fish runs without the slightest concern for our most solemn agreement. As a result, few salmon and steelhead remain.

Before the coming of the whiteman the Yakima people bartered and traded steelhead as a viable food source which sustained their life. This viable food source is used by us today. It is the feeling of my people that it is unjust to take from us what the Creator granted for our use and give that resource to private third parties.

I cannot say this any better than my Grandfather, Chief Meninock did in testimony in a fishing violation case many years ago: "When we were created, we were given our ground to live on, and from that time, these were our rights. This is all true. We had the fish before the missionaries came, before the white man came. We were put here by the Creator and these were our rights as far as my memory to my great grandfather. This was the food on which we lived. My mother gathered berries; my father fished and killed the game. These words are mine and they are true. It matters not how long I live, I cannot change these thoughts. My strength is from the fish, my blood is from the fish, from the roots and the berries. The fish and the game are the essence of my life. I was not brought from a foreign country and did not come here. I was put here by the Creator. We had no cattle, no hogs, no grain, only berries and roots and game and fish. We never thought we would be troubled about these things and I tell my people and I believe it; it is not wrong to us to get this food. Whenever the seasons open, I raise my heart in thanks to the Creator for his bounty that this food has come."

As if our empty nets were not enough, the State of Washington attempted to deny our rights to dip our nets into the water. Only the courage and integrity of a few good men prevented this ultimate injustice. The State of Washington, negotiated, together with the United States, an agreement with my people which voluntarily reduced our Columbia River steelhead harvest from over 29,000 to less than 4,000 in four years—a reduction promised to result in increased Indian salmon harvests which have not occurred. In spite of our good faith efforts to reduce our harvest of steelhead, this legislation has been introduced. Unfortunately, introduction of this bill makes my people question the wisdom of seeking any further cooperative agreements on this most difficult issue.

This bill represents another chapter in the history of Washington State's attempts to abrogate solemn treaty rights, where we now find that privilege is becoming a right and a right is becoming a privilege. Abrogation of our treaty right and loss of our way of life is the clear intent of this legislation. The passage of this bill can only lead to destruction of my people and our culture. The courts of the United States have consistently refused to allow such action. This bill is an attempt to do by legislation what would not be allowed by the judiciary. Is it the intent of the United States to breach a solemn agreement between nations and to destroy a portion of our Indian culture to satisfy a few sportsmen? Was your word so lightly given at the treaty grounds? If you search your souls, I trust you will find that such action is both unjustified and inequitable. If, in fact, it is the intent of this Committee to undo this naion's word, I do not believe that the founders of this nation granted you that power.

I do not understand the United States Constitution to allow the taking of a vested property right—the Indian fishing right—and giving that right to other private parties—non-Indian steelheaders. The 7,000 members of the Yakima Nation are citizens of the United States and wards of that government and this bill violates the United States trust responsibility to those citizens as it does to all other Indian citizens throughout the State of Washington. This bill is opposed in its entirety by all Indian citizens of the States of Washington, Oregon and Idaho, and I believe by a substantial majority of our non-Indian citizens as well. The small vocal minority supporting this bill should not be allowed to make our nation break its word to the Indian people. I urge you and the Committee to reconsider this legislation and withdraw it.

PREPARED STATEMENT OF HAROLD CULPUS, WARM SPRINGS TRIBE

My name is Harold Culpus. I am Chairman of the Columbia River Inter-Tribal Fish Commission and a member of the Warm Springs Tribal Council.

Mr. Chairman and members of the Committee, there are millions of Americans who enjoy the taste of salmon, and other food fish such as trout, bass, walleye and catfish, because of the commercialization of these fish.

We should remember that it is because the Indians agreed to share the fish resources with the arriving European settlers that non-Indians are able to enjoy these food fish.

As a result of the treaties negotiated between two independent sovereign nations—yours and ours—the Indians agreed to share our land with you and let you live in peace. In these treaties the Indian nations reserved the rights we

have held since time immemorial, and the U.S. Government agreed to protect these reserved rights as trustee. The main rights we reserved were water, and everything in it, which was held sacred by my people, and land as the mother earth, considered by my people as a mother where we all came from. It is from Mother Earth that food sprouts which forms our body and heart. It is from Mother Earth that we are nursed to adulthood and it is of the blood that flows through and over her—called water—that we partake. Finally, it is to Mother Earth that we shall return, dust to dust.

All of this is called life. And all of this is why we as native Americans hold the land, water, and all of its resources sacred within our hearts, not for sale or trade. This is what our ancestors agreed to—yours and mine—when they shook hands and agreed on June 9, 1855 to the Treaty with the Tribes of Middle Oregon.

Senator COHEN. Ms. Brigham?

STATEMENT OF N. KATHRYN BRIGHAM, MEMBER, UMATILLA FISH AND WILDLIFE COMMITTEE

Ms. BRIGHAM. Thank you, Mr. Chairman.

My name is N. Kathryn Brigham. I am a member of the Umatilla Fish and Wildlife Committee and the Columbia River Inter-Tribal Fish Commission.

I am here today to say, once again, that our treaty rights are not for sale; therefore, I oppose S. 874 in its entirety.

From the very beginning our people have relied on this resource for our livelihood. That is why our tribal leaders made sure that there was language in our treaties to protect them.

Yet, since the treaties were signed and ratified by Congress we have had to continually fight for them. Why is that?

We have heard over and over again that the United States is an honorable nation: a nation that keeps its word. Yet the livelihood of our people is at stake today with this bill.

With the assistance of Doug Dompier, director of our Fisheries Technical Services, I will show you the status of the Columbia River steelhead runs. You have also been provided the biological analysis of the salmon and steelhead runs.

Mr. DOMPIER. What I would like to show the committee members today is some of the biological information in relation to the Columbia River and some of the issues that have been discussed over and over.

The first chart here that I am going to discuss is the so-called 5-year plan where the treaty promised alternate salmon in return for giving up target fishing in steelhead.

[See additional material at conclusion of oral testimony, beginning on p. 218.]

Mr. DOMPIER. What you see here simply is a graph that showed prior to entering this agreement in 1975 and 1976 that tribal fishermen caught over 120,000 each year. That was their promise in that 5-year plan by the States and Federal Government that they would continue to catch 120,000 fall chinook each year.

That catch dropped in 1974 to 46,000, climbed a little bit up to 60,000 and in 1979 dropped again to 33,000. This year in 1981 the preliminary figures that we have to this fall season is 35,000.

In other words, if you add up under that curve the treaty fishermen are owed 370,000 fall chinook fish.

In the same instance they agreed under this plan to limit their steelhead harvest. The steelhead harvest then dropped from a high of 31,000 in 1977, which was the first year of the plan, to 4,800 in 1980. The preliminary figures for this year, 1981, are approximately 5,200 steelhead that were caught by the treaty fisheries.

Ms. BRIGHAM. Five years ago, we, the Columbia River treaty tribes, were willing to negotiate with the States of Oregon and Washington on chinook and steelhead. At that time, we signed a court-approved management scheme, the 5-year plan, to limit our commercial fishery on steelhead.

In return, the States and Federal Government committed themselves to improve certain salmon runs to make up our losses. During the 5 years, we have reduced our steelhead catch from a high of 31,300 to a low of 4,800.

At the same time, our chinook harvest has dropped from 121,000 to a low of 33,600 because the States and Federal Government have not kept their end of the bargain. We kept our word and now you are offering us legislation that again breaks your pledge and takes away an important source of income for our people.

We agreed to forgo a target commercial fishery on steelhead in recognition of the importance of the steelhead to recreational uses.

As can be seen by the chart, most of the river systems on the Columbia are open to sportsmen. Note the Indian commercial zone extends only from Bonneville to McNary Dam and that many of the sports rivers are above that zone.

I believe that past management of the Columbia River primarily for steelhead sport fisheries has contributed to the decline of other salmon stocks in the Columbia system.

In the drive to regulate the steelhead as an exclusive game fish, State and Federal fishery agencies have transferred many millions of up-river salmon eggs to other parts of the United States and to other countries. This practice has further reduced those salmon species which run concurrently with steelhead. These transfers may have reduced the catch of steelhead by Indian fishermen, but they have also virtually eliminated some salmon runs to which the tribes are entitled.

To compound the problem the Washington State Game Department also provides steelhead eggs to other States. They justify this by calling them "surplus."

With such management practices as these the agencies themselves have added to the demise of the salmon and steelhead resource for there is no such thing as a "surplus"—only improper management.

[See additional material at conclusion of oral testimony, beginning on p. 218.]

Ms. BRIGHAM. The next graph shows that the steelhead runs are the strongest of all the salmonids in the Columbia.

Mr. DOMPIER. I want to emphasize this sport and Indian commercial zone and this chart does that. You have a series of blue. They are the sport fishing rivers in the States of Washington, Oregon, and Idaho where steelhead are caught.

As you can see, the commercial zone extends only from Bonneville Dam to McNary Dam. We may use this chart later in some additional testimony.

This chart was prepared in 1979 when we started all these things with the steelhead bills.

The steelhead is still the largest run in the Columbia River system above Bonneville Dam. If we were to do this for 1980 and 1981, the steelhead line would extend beyond the end of the chart. Some of our salmon species would have to go down further.

Clearly this year's run was one of the best runs of steelhead we have had in the Columbia River in over 20 years. When we left last week, it had passed 151,000.

Ms. BRIGHAM. Although the natural runs of these fish have declined since the 1950's, it has not been due to overfishing. Habitat loss and power dams are the primary reasons for the reduction of natural steelhead runs.

To increase steelhead runs, the Nez Perce and War Springs Tribes now have steelhead rearing facilities on their reservations. There are plans to build more of these facilities on the Nez Perce and Yakima Reservations.

Additionally, the tribes have taken the lead, on and off of their reservations, to increase the natural production of steelhead.

On the Umatilla Reservation we have worked with the U.S. Fish and Wildlife Service to complete an in-stream flow study of the Umatilla River. This study was necessary to determine rehabilitation programs which, we hope, will lead to increased production of salmon and steelhead once funding sources are identified.

The Umatilla have also completed a study of two rearing ponds on the Umatilla Reservation and additionally a study is currently being completed on the construction of a steelhead acclimation pond on our tribes' lands.

In the area of habitat protection, the Umatillas, as well as other member tribes of the Columbia River Inter-Tribal Fish Commission, are attempting to protect natural production of the John Day River system which is threatened by logging operations in the Umatilla National Forest. We are forced to take strong action on this issue when political pressures forced the Oregon Department of Fish and Wildlife to retreat from a previous strong position.

In addition, CRITFC member tribes are supporting habitat rehabilitation efforts on the Grand Ronde and John Day Rivers in order to increase natural production. Funding for these proposals is being sought by the tribes under the Pacific Northwest Regional Power Act, Public Law 96-501.

Our tribes have always supported the protection of salmon and steelhead habitat. We are involved in environmental planning and coordination from the headwaters, to the mouth of the Columbia River, and out into the Pacific Ocean.

We continue to believe that the protection and restoration of natural habitat is paramount to the survival of the salmon and steelhead resource.

Senator GORTON [acting chairman]. Excuse me; we will have to recess while I go on the floor to vote.

[Recess taken.]

Senator GORTON. The committee will resume its hearing. You may continue.

Ms. Brigham. Of particular concern to the tribes is the uncontrolled destruction of limited resources. Forest and agricultural land management, energy production, and urban sprawl continue to trade off resources such as steelhead, for short-term, limited gains.

Future demand for energy and water will be great. S. 874 is merely a band-aid for these complex regional problems which the States refuse to address.

The game classification of steelhead has not done away with non-Indian commercial catch of the species. Lower river gill netters continue to catch steelhead but often fail to report them to fisheries agencies; thereby increasing management problems. The problem is very apparent as can be seen by the timing of salmon and steelhead runs into the Columbia River.

Mr. Dompier. With this graph you have the two different segments of the steelhead runs and the times of these runs in the system in relation to the salmon species in the Columbia River.

As can be seen, steelhead pass through zone 6, almost continually, the entire year. The only time we do not have any count on steelhead principally is because the ladders are at times shut down for maintenance and there is no counting. That is during the winter months.

As you can also see, the peaks of these runs coincide closely to the peaks of the salmon runs that are in the Columbia River system.

Because of this situation, whenever there are fisheries in a mixed stock, steelhead as well as salmon are going to be harvested.

As Ms. Brigham said, the lower river catch, because it is outlawed, simply is not reported. All of us who work the Columbia River as biologists know the fish are caught. They simply are not reported.

Ms. Brigham. Extending the same designation to Indians will simply compound ineffective regulations.

It is interesting to note here that a television station from Portland, Oreg., held a public hearing on the Indian treaty fishing rights in which S. 874 was discussed. All fishing groups, including ocean trollers, in-river gill netters, tribal fishermen, and sportsmen organizations were represented.

When the question was asked who supports this bill not one individual or organization supported it. It was also noted that the most vocal known supporter was invited but refused to attend.

Many people have been told that sport license fees pay much of the cost of steelhead hatchery production. This is not true. To our knowledge, not one of some 30 steelhead facilities on the Columbia is paid for solely by the sale of fishing licenses and punch cards.

These hatcheries and rearing ponds are funded almost entirely by private and public power companies and the Federal Government to compensate for destruction of fisheries lying mainly in ceded areas.

Mr. Dompier. What this chart shows you is exactly who pays for the steelhead rearing in the Columbia River Basin. We had to change it from the June meeting because at that time there was one State partially funded hatchery called the Two Canyon Hatchery. They no longer do it and it is now the Federal Government.

So as you can see, the funding of the steelhead facilities in the Columbia River Basin comes from the power companies and the Federal Government. The reason for that simply is the mitigation for the construction of all the dams that have been constructed on the Columbia River system.

Ms. BRIGHAM. Finally, I would like to respond to the question most often raised by Congressman Bonker during the Seattle hearings.

His question about the so-called Steelhead Protection Act concerned whether the steelhead catch was used to benefit our entire tribe rather than individuals who fish commercially.

Generally, Congressman Bonker's question shows a misunderstanding of economics, tribal sovereignty, and tribal cultures.

In the first place, commercial fishering benefits the tribe by bringing income to tribal members who spend their income in the area of the reservation, which benefits other tribal members. This is basic economics. It is the same kind of economics that occurs in non-Indian societies, on the coast, for instance.

Regarding tribal sovereignty, our tribal governments have not chosen to collect and distribute tribal fishing income, as Congressman Bonker suggests.

While our tribes most likely possess this right because of their sovereignty, we have not chosen to exercise it for a variety of reasons. One of these might be that the free enterprise system adequately insures fair distribution.

Finally, Mr. Bonker's question ignores the ways in which our cultures insure distribution of our catch to nonfishing tribal members.

Our families are not simply a mother, a father, and 2.5 children, but instead may include many other relations who share in the subsistence catch.

When our people have ceremonies at which the ceremonial catch is eaten, it is not just once a year on Thanksgiving, for instance, but at weddings and funerals and at Sunday services where many tribal members attend.

In any event, Congressman Bonker's question raises a red herring; it has nothing to do with steelhead protection, just like S. 874.

I would like to leave you with a quote from the recent report on Indian rights published by the U.S. Commission on Civil Rights:

> If this society through its Government does not live up to its promises and commitments to Indian people, then no rights are secure.

Let us not break any more promises.

Following the reports from the panel, I would like to have Mr. Dompier make further comments.

Senator GORTON. Thank you.

Mr. George?

STATEMENT OF LEVI GEORGE, SECRETARY, FISH AND WILDLIFE COMMITTEE, YAKIMA TRIBAL COUNCIL, YAKIMA NATION

Mr. GEORGE. Thank you, Mr. Chairman.

Mr. Chairman and concerned people, I know everybody is getting tired and we have had a long day, but as you can see I do not have anything written. I am saying what I have on my mind.

People are concerned about the resource that we have talked about all day. It is important to the Indians, as you well know.

Sitting here listening to my group testifying reminds me as to how we have conserved our resource. When I was a young boy I watched my people practice conservation. When I think back to before the white man came to this country, and even when I was a child in the middle 1930's, we had plenty of resource.

The resource we are talking about today was there.

Things have changed, as I remember it. When I was a young boy we never fished on the weekends. Nobody fished on the weekends. When our leaders said it was time to quit because it was Friday, then no matter how much fish was moving, everybody had to quit. Nobody fished at night.

Then the system changed because some of our people had to keep up with their next door neighbor and had to work to support their families.

The system changed in the mountains and non-Indians would not allow our people to go up where we used to get our food in the form of berries, roots, and so on.

We turned around to work and that is how the system changed.

Now today we fish at night and we fish Saturdays and Sundays. But still, we try to practice conservation restricted to certain lengths of our nets. I am sure that the chairman knows this. I know Senator Gorton knows this very well.

As was mentioned earlier, there was much fish we used to catch in terms of steelhead. It has been cut down to a few in terms of the number of 5,000 or whatever.

I think you realize how hard it is for our people to abide by the law and restrict our people to such a low minimum of our fishery.

And yet, I am a religious leader and it is against our religion to do that to our people. We have to tell them that they do not fish. They are supposed to do it themselves, but now we have to abide by the white man's law and we go and tell our people to quit fishing.

So, the Senators can understand all the speakers who have been here today. We hope that you will support our needs. As you know everyone in this room takes an oath. When you raise your right hand then before you become an official officer you take that oath to take care of the people's needs and help people.

Like I stated last Thursday, as we were t[illegible] by our old people, any time you have a problem back home then go to Washington, D.C. and there is a group of people there who are supposed to help. That is why we are here.

So, I hope you will help my Indian people. I hope that you will support our needs.

Thank you.

Senator GORTON. Mr. Yallup?

Mr. YALLUP. I have a closing comment, Mr. Chairman. We had additional information, but we do not have it with us. But let me say this.

This morning during the course of questioning of these people from the Department of the Interior, certain things were said.

Prior to the 1970's, we had this same situation, as I understand it. Prior to going back to my tribe in 1972, *United States* v. *Washington* had begun. At that time it was understood by my tribe that this issue would be settled once and for all in the courts.

From what I heard this morning, and from the questioning that these people received, then that should have been resolved at that level.

But the line of questioning that Mr. Gorton gave this morning to the Interior people seems to me to say that the issue is not resolved. It was supposed to be resolved here in Congress. I think that should not be the way.

The merits of the understanding we have from the courts and the protection that we were supposed to receive from the United States should always be there.

I think what Mr. George was trying to say is that the proper rights of our tribes have to be protected by all. If we understand our constitutional rights, then we have property rights. That must be understood.

The thing we are talking about is this. There is a change of the laws in order to protect the steelhead and what we are saying is that it has not become, in our sense, a rare species. In fact, it is on the reverse. The numbers have grown.

Because of our understanding that we had prior to thinking about the enhancement bill, it was to do all these various things that we are asking under this same bill, S. 874.

We do not see the need, from our standpoint as a tribe, for any additional things on top of losing some of the rights that are supposedly protected by you people.

So, therefore, we see no reason at all. It is costing us money. It is costing everybody's time to travel back and forth here just to do exactly what the other bills are supposed to be doing.

It is a bad feeling among the Yakima Tribe. I am speaking today on behalf of 7,000 members and probably thousands of yet unborn. We want to preserve what is rightfully ours, but our forefathers have already done this for us, 100 years ago.

With that, I want to thank the committee for looking into the matter. I hope you will count the numbers and understand what we are saying.

Thank you very much.

Mr. Dompier. Finally, Mr. Chairman, what we would like to do is this. I would like to ask that we submit some of the posters we have shown you for the record. We do not have them here. We would like to have them put in the record.

I would also like to have the biological analysis of the Columbia River steelhead by the Columbia River Inter-Tribal Fish Commission inserted in the record.

Senator Gorton. Without objection, that material will be placed in the record at the end of your testimony.

Mr. Dompier. Finally, I would like to briefly discuss some of the points that Mr. Ayerst raised with his testimony this morning.

The thing I found most interesting about Mr. Ayerst's statement is that there is absolutely nothing in there about the Columbia River system and the treaty fisheries in the Columbia River.

I believe the reason for that is that Mr. Ayerst recognized that we have done one good thing on the Columbia River. We are bringing back the steelhead runs and we are bringing them back rather rapidly.

As was mentioned in testimony, this year's run was larger than the 43-year average, much larger. Next year's run is expected to be even larger yet.

So it is a success story and those of us who work the Columbia are quite proud that we have the steelhead back.

On page 3, Mr. Ayerst states, and I quote:

> That Puyallup River will be managed for hatchery stocks and as such will be stocked with huge quantities of hatchery smolts and harvest rates will be maximized.
>
> This management strategy, if allowed to continue, virtually assures the extinction of native steelhead stocks in the Quinault River.

The same issue was brought before this commission on the Wind River, a tributary to the Columbia. But the people and the sportsmen wanted that managed for a steelhead stock and said: "No more hatchery plants."

His own game commissiion turned it down, so I just wonder if he is really telling you the whole story or is just picking one river out as an example.

Also on page 8 of his testimony he states:

> Many of the tribes do not collect information on total fishing efforts, the number of nets fished expended by the fishermen.

Gentlemen, on the Columbia River the ones that collect the data are the tribes and the Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and Washington Department of Fisheries.

We note that the [Washington] department [of Game] is quite absent when it comes to getting this information.

On page 9 of his testimony a statement is made:

> Like all commercial fisheries, the tribal fisheries in Washington State have one objective which is to pay maximum economic yield.

Gentlemen, as we have shown today that is not the case on the Columbia River system. We had a 5-year plan and we lived up to the 5-year plan. The reason for that was that the steelhead was recognized by the tribes as a recreational fish and there was not a target fishery on them.

Also on that same page of his testimony he says:

> They ignore the fact that steelhead is unlike salmon and do not always die after spawning.

Again that is not the whole story. In the situation with the Columbia River and the hatchery system is above Bonneville Dam. All the wild stocks do not make it back out. They do not go out to the ocean and come back again.

The only time that occurred was when we had about one dam on the Columbia and there was a lot of spilling at the dam.

But in terms of the upper Columbia, most steelhead are sacrificed at the hatchery. There is no concern for them at that time.

On page 10 of his testimony, Mr. Ayerst makes the statement:

> Preliminary results indicate that hatchery fish do not reproducc as successfully as the wild native steelhead stocks.

I am sure what Mr. Ayerst is talking about is the recently completed study, or maybe it is still ongoing, that was done on the Kalama River, which is a tributary in the lower Columbia below the Bonneville Dam.

The interesting situation about the Kalama River and where this information was found is that the Kalama River never shuts down. It is open 365 days a year for sports fishermen.

If this, in fact, is the case, then why have they not curtailed the sports fishery on the Kalama River?

It also should be pointed out that perhaps this committee can investigate as to who really funds that study. I think you will find that is probably being funded either by the National Marine Fisheries Service or another Federal agency.

Those were the main points that I wish to draw to your attention. Thank you very much.

Senator **Gorton**. Thank you, gentlemen.

Senator Melcher?

Senator **Melcher**. Thank you, Mr. Chairman.

I would like to inquire of this panel what their latest income figures in dollars are. I am talking about the tribes that derive income from steelhead.

Mr. **Dompier**. Senator, I am not sure if that information is available.

Senator **Melcher**. I gather from your statements that you have found that steelhead at one time were in jeopardy; is that right?

Mr. **Dompier**. In terms of the steelhead run we have had a few smaller runs in the Columbia. I think 1 year it was as low as 85,000. That was the lowest count we have ever had at the Bonneville Dam.

I believe that was even within the last 3 years. I think it was 1979. It is not even that bad, though.

We did have one run in that magnitude, but in terms of it being a conservation problem on the Columbia, it has never been viewed as one, to my knowledge. I have worked on the Columbia for a number of years.

Senator **Melcher**. Did I understand your statement correctly that you said that over a 42- or 43-year period that there has been an increase in steelhead numbers?

Mr. **Dompier**. That is correct. The 43-year average at Bonneville Dam is 140,695. This year's run, when we left as of Monday last week, the number at that time was already 151,884. We still have over a month of this run before it will be terminated.

Senator **Melcher**. What was it in 1980?

Mr. **Dompier**. I believe it was 129,166 in 1980.

Senator **Melcher**. Do you have 1979?

Mr. **Dompier**. It is in my briefcase. I can get it out if you like.

Senator **Melcher**. What is the reason it rose from 85,000 during the last 3 or 4 years?

Mr. **Dompier**. I am trying to remember, but I think it was 1978 and 1977.

Senator **Melcher**. So then, that was within 3 to 5 years?

My question is: What is the reason for such a large difference?

Mr. **Dompier**. The reason simply is that although we have discussed with you today that the lower Snake River hatcheries have not all come online and we have had reduced funding and funding taken away for 1982, but we have had some additional steelhead production and substantial numbers of steelhead being produced in hatcheries, particularly in Idaho and a couple on the lower Snake complex. There is another hatchery which is a steelhead hatchery in Idaho. They have finally solved their hatchery problems. They are turning out a high quality fish and it is helping the run.

There is also Hagerman Hatchery in Idaho. These are where some of our successes are coming from.

Senator **Melcher**. The Department of the Interior's report letter stated:

> The steelhead were in jeopardy years before the landmark decision in United *States* v. *Washington*.

That is the *Boldt* decision

Has that case or the *Sohappy* v. *Smith* case, which is the Oregon case, and the subsequent implementation, done anything to further jeopardize the status of the steelhead?

Mr. **Dompier**. No, as a matter of fact, all the steelhead runs have been going up since all the cases. It is interesting to note that immediately after those decisions some of the largest sports fisheries that ever occurred in Washington and Oregon came about. This was on the upper Columbia River stocks, such as 1977 and 1978.

Both of those years had the best sports fishery. It was on the upper Columbia and the Deschutes River in Oregon.

Senator **Melcher**. Are you telling us, then, that the court decisions have been helpful in increasing the number of steelhead?

Mr. **Dompier**. I would have to put it this way. The court decisions have been helpful. Yes, I would say they have and for a variety of reasons. It has given the tribes the ability to take the strong positions they always do in the protection of the resource.

Senator **Melcher**. One final question.

You have cited for the figures the count at Bonneville.

Mr. **Dompier**. That is right.

Senator **Melcher**. Over a 43-year period, is that recognized as being the best source of information on the number of steelhead on the Columbia?

Mr. **Dompier**. Yes, that is the actual numbers of fish that were counted by the counters at the dam.

Senator **Melcher**. Is that recognized as the best source of accurate information?

Mr. **Dompier**. Yes, that is the best source.

Senator **Melcher**. Is that in contention?

Mr. **Dompier**. It is not in contention for those of us who use it in management. It is not in contention in the numbers of fish crossing the dam.

Senator **Melcher**. Will I hear contrary testimony from the next witness?

Mr. **Dompier**. I assume not.

Senator **Melcher**. You have discussed this thing pro and con for several years now.

Mr. **Dompier**. All of us who manage the resource, all State agencies and Federal agencies, use those figures. So we all use it jointly.

Senator **Melcher**. So your testimony is based on the information that over this period of time the run of steelhead has increased; is that right?

Mr. **Dompier**. That is correct.

Senator **Melcher**. Can you identify for me exactly why the year 1977 was so low?

Mr. **Dompier**. It was the year 1975 when there was a run of 75,500.

Senator **Melcher**. It was 75,500.

Mr. DOMPIER. Yes, and the reason for that was that in the year 1973 we had a drought in the Columbia system. It did create problems for the downstream migrants. That is reflected in the 1975 run. That was part of the problem.

Senator MELCHER. But over the 43-year period, that was the low point. This year seems to be the high point in the count; right?

Mr. DOMPIER. It will be one of the highest of the 20-year counts. I am sure that this year's run will be at least the fourth largest in the last 21 years over the Bonneville Dam.

Senator MELCHER. What about the 43-year period?

Mr. DOMPIER. I do not have the counts with me, but going back again from 1959 back to 1938—I do not have that with me, but I have the 20-year averages with me.

Senator MELCHER. Thank you.

Senator GORTON. Mr. Yallup?

Mr. YALLUP. I served on the tribal council some years ago and at that time the concentration in the lower Columbia River, zone 1 through 5, had the fishery in coho in the mainstem of the Columbia River.

When you fish for coho, which is smaller than the regular salmon, they were also catching the steelheads with the same size mesh nets. But this year they have not concentrated on the coho, so the number has picked up. But starting yesterday they went back into the mainstem again. So we can see a number of a decrease over the Bonneville again.

Senator MELCHER. Do any of the tribes, either individually or collectively, maintain fish hatchery facilities for steelhead?

Ms. BRIGHAM. The Umatilla Reservation has a proposal, that we are seeking funding for, which is for steelhead. We started a pilot program this year that will be raising steelhead.

Senator MELCHER. Any other tribes?

Mr. YALLUP. We have several rearing ponds in the area. It numbers in the thousands.

Senator MELCHER. Are they steelhead?

Mr. YALLUP. Yes. It is like 200,000.

Senator MELCHER. What would be the effect on these projects if the bill were enacted?

Ms. BRIGHAM. From my personal opinion, if you cannot harvest it, why raise it?

Mr. YALLUP. I would not have any reason to raise steelheads. We would change to the salmon?

Senator MELCHER. Thank you all very much.

[The additional material supplied by Ms. Brigham and Mr. Dompier follows. Testimony resumes on p. 234.]

COLUMBIA BASIN SPORT/INDIAN COMMERCIAL
STEELHEAD FISHING AREAS

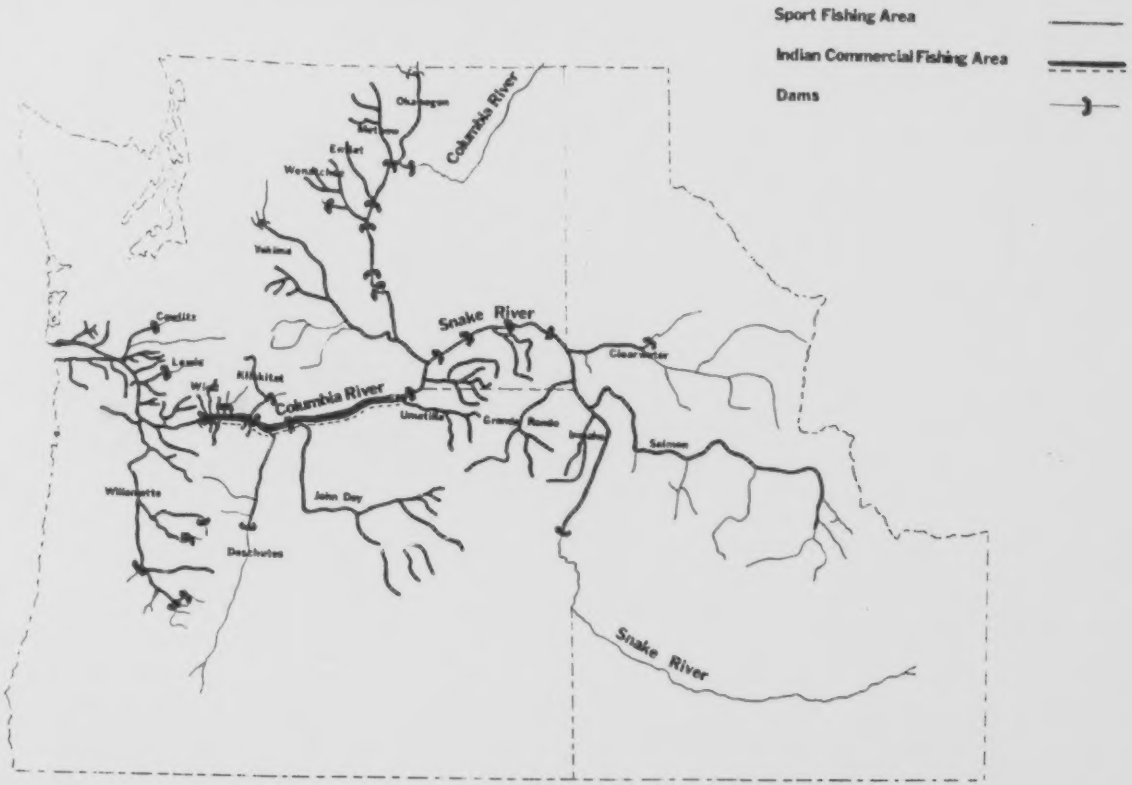
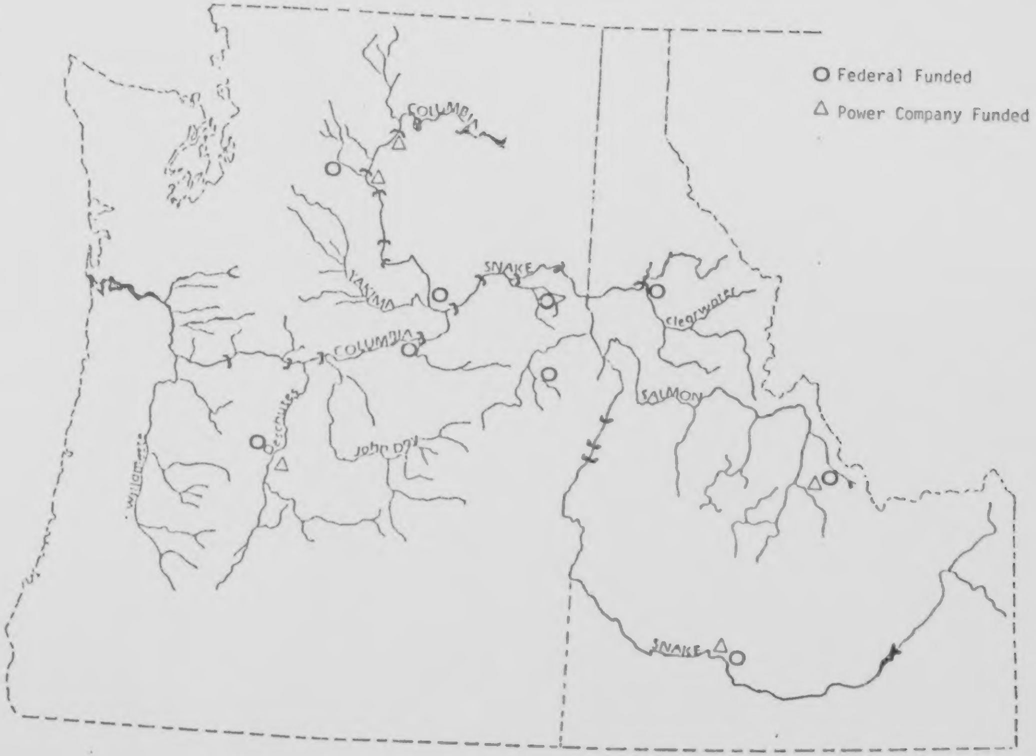

Sport Fishing Area
Indian Commercial Fishing Area
Dams
Okanogan
Methow
Columbia River
Entiat
Wenatchee
Yakima
Cowlitz
Snake River
Lewis
Klickitat
Wind
Columbia River
Clearwater
Umatilla
Grande Ronde
Imnaha
Salmon
Willamette
John Day
Deschutes
Snake River

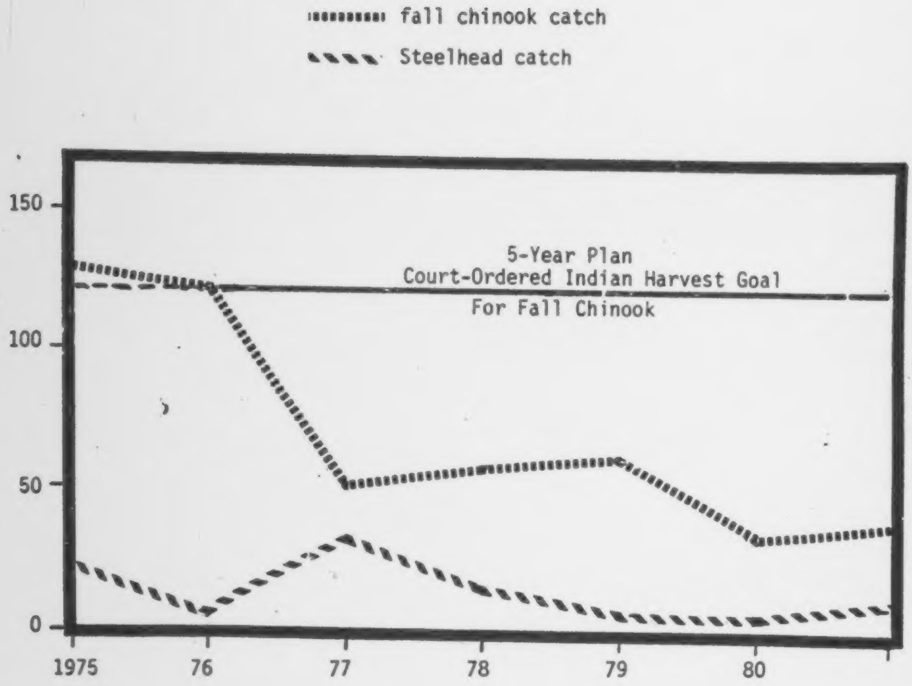
Figure 1. UPPER COLUMBIA RIVER BASIN

STEELHEAD REARING FACILITIES


O Federal Funded
△ Power Company Funded
COLUMBIA
YAKIMA
SNAKE
COLUMBIA
Clearwater
SALMON
Deschutes
John Day
Willamette
SNAKE

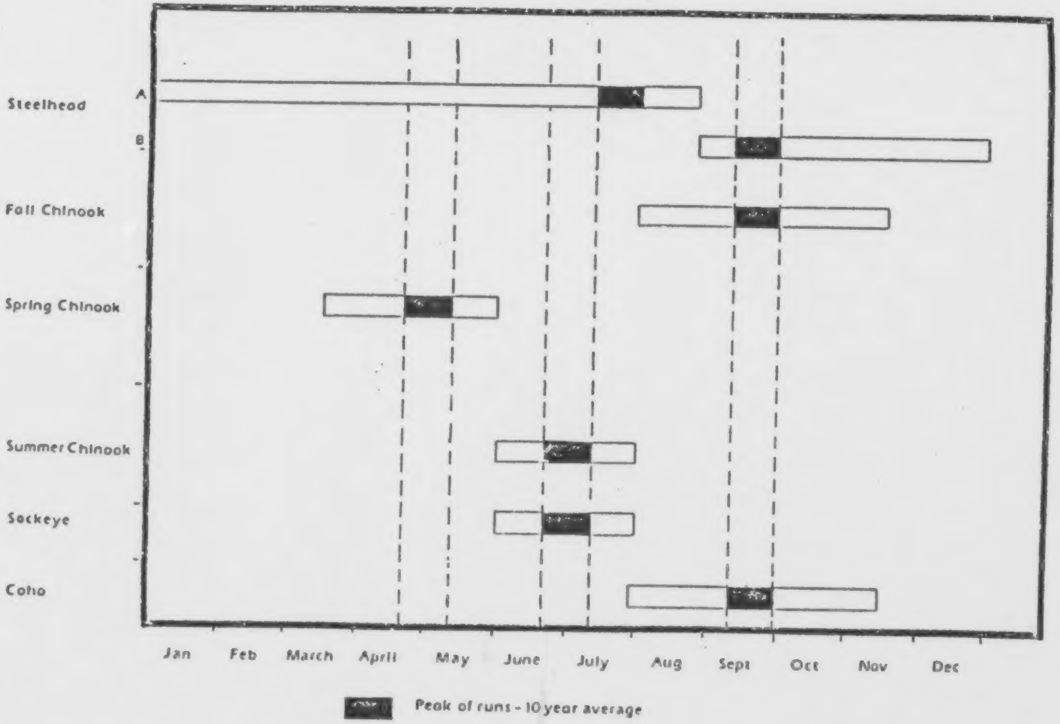
CRITFC Illustration

Figure 2



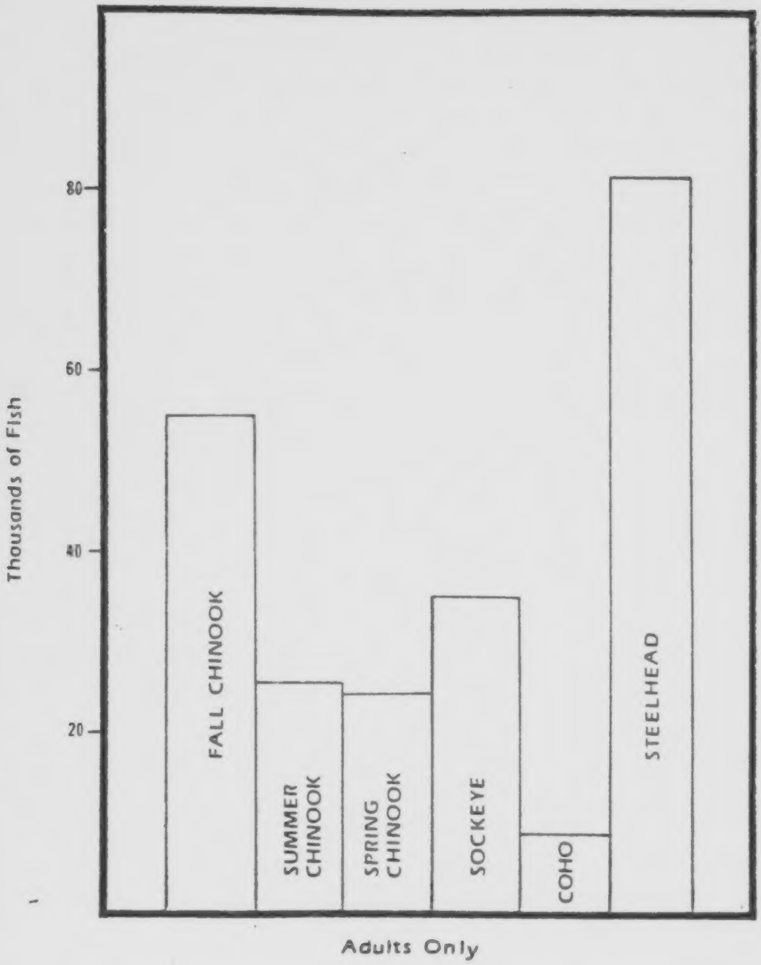
Treaty Indian Catch of Steelhead and Fall Chinook
(Numbers)

Figure 3.



Timing of Salmon and Steelhead Runs in the Columbia River Counted Over Bonneville Dam.

CRITFC Fig



1979 Salmon and Steelhead Run Sizes at
The Dalles Dam

CRITFC Fig. 4

Table 1.

	COLUMBIA RIVER			SNAKE RIVER		
Species	20 Yr. Average Bonneville Dam	1980 Bonneville Count	% Change	Average Ice Harbor Dam	1980 Ice Harbor Count	% Change
Steelhead	132,176	129,166	- 2.3	48,546 3/	48,977	+ 1.0
Fall Chinook	138,590	127,436	- 8.0	7,413 4/	1,142	-84.6
Spring Chinook	103,405	53,100	-48.6	33,406 4/	8,301	-75.2
Summer Chinook	56,555	27,000	-52.3	15,056 4/	2,327	-84.5
Coho	35,973 1/	12,120	-64.7	1,296 2/	48	-96.3
Sockeye	68,953	58,901	-14.6	528 3/	36	-96.3

Table 1. Comparison of long term average run sizes of adult salmon and steelhead to Columbia and Snake Rivers, with 1980 run sizes. Columbia River shown by Bonneville Dam counts, Snake River by Ice Harbor Dam counts.

1/ Adult counts available only since 1965

2/ Adult counts available only since 1967

3/ Adult counts available since 1962

4/ Adult counts available only since 1964

Table 2 . EXISTING STEELHEAD REARING PROGRAMS
ABOVE BONNEVILLE DAM

	FUNDING AGENCY	OPERATING AGENCY
Lower Columbia Basin (Bonneville to McNary Dam)		
1. Warm Springs National Fish Hatchery	USFWS	USFWS
2. Round Butte Hatchery	PGE	Oregon
3. Irrigon Pond	USFWS	Oregon
Mid-Columbia Basin (McNary to Chief Joseph Dam)		
1. Public Utility District Hatchery Facilities (Douglas and Chelan)	PUD's	WDG
2. Leavenworth National Fish Hatchery	USFWS	USFWS
3. Wallowa Hatchery	PNRC	ODFW
4. Ringold	NMFS	WDG
Snake River		
1. Tucannon Hatchery	NMFS	WDG
2. Dworshak National Fish Hatchery	CoE	USFWS
3. Pahsimeroi Hatchery	IPC	IDFG
4. Hayden Creek	USFWS	IDFG
5. Hagerman	USFWS	USFWS
6. Niagra Springs	IPC	IDFG

USFWS = U.S. Fish and Wildlife Service
ODFW = Oregon Dept. of Fish and Wildlife
PUD = Public Utility District (Chelan, Douglas Counties)
PGE = Portland General Electric Co
PNRC = Pacific NW Regional Commission
NMFS = National Marine Fisheries Service
WDG = Washington State Dept. of Game
CoE = Corps of Engineers
IPC = Idaho Power Company

Table 3. Top 10 Summer Run Steelhead Streams and catch for sportsmen in Oregon, 1970-1980

Stream 1970-71 Run Year	1971-72 Run Year	1972-73 Run Year	1973-74 Run Year	1974-75 Run Year
1. Deschutes Rv..9,205*	1. Deschutes Rv..13,367*	1. Deschutes Rv.14,829*	1. Deschutes Rv..8,437*	1. Deschutes Rv..10,400*
2. Umpqua Rv. N.F.....7,011	2. Columbia Rv. Lwr...10,801	2. Umpqua Rv. N.F......8,294	2. Columbia Rv. Lwr...5,902	2. Rogue Rv & Bay.....6,939
3. Columbia Rv. Lwr...6,520	3. Umpqua Rv. N.F......6,352	3. Columbia Rv. Lwr....6,988	3. Umpqua Rv. N.F.....3,256	3. Nestucca Rv & Bay..6,683
4. Rogue Rv & Bay.....4,334	4. Rogue Rv. & Bay.....6,242	4. John Day Rv... 5,359*	4. Siletz Rv & Bay....2,976	4. Siletz Rv & Bay....6,076
5. Siletz Rv.& Bay....3,740	5. Siletz Rv. & Bay....6,172	5. Nestucca Rv. & Bay..4,223	5. Nestucca Rv & Bay..2,611	5. Umpqua Rv. N.F.....4,007
6. Umpqua Rv & Bay....3,723	6. Nestucca Rv. & Bay..3,666	6. Rogue Rv. & Bay.....3,659	6. Rogue Rv & Bay.....1,943	6. Umpqua Rv & Bay....3,901
7. Nestucca Rv & Bay..3,599	7. Umpqua Rv. & Bay....3,091	7. Siletz Rv. & Bay....3,601	7. Columbia R Up. 1,568*	7. Columbia Rv. Lwr...3,839
8. Columbia R Up..1,943*	8. John Day Rv....2,666*	8. Umpqua Rv. & Bay....3,598	8. Hood Rv.........1,395*	8. John Day Rv... 2,781*
9. John Day Rv....1,789*	9. Wilson Rv...........2,345	9. Umatilla Rv....1,913*	9. Umpqua Rv & Bay....1,183	9. Wilson Rv..........2,401
10. Hood Rv........1,690*	10. Columbia R Up..1,829*	10. Wilson Rv...........1,819	10. Wilson Rv..........1,016	10. Hood Rv........2,397*
Streams Fished..92	Streams Fished...92	Streams Fished..92	Streams Fished..92	Streams Fished..92

Stream 1975-76 Run Year	1976-77 Run Year	1977-78 Run Year	1978-79 Run Year	1979-80 Run Year 1/
1 Deschutes Rv... 7,340*	1 Deschutes Rv.. 10,679*	1. Deschutes Rv.. 9,361*	1. Rogue Rv & Bay....11,202	1. Rogue Rv & Bay....10,752
2. Siletz Rv & Bay....5,647	2. Rogue Rv & Bay......4,397	2. Rogue Rv & Bay......9,272	2. Siletz Rv & Bay....5,300	2. Umpqua Rv N.F......4,114
3. Nestucca Rv & Bay..5,458	3. Siletz Rv & Bay.....4,096	3. Siletz Rv & Bay.....5,865	3. Clackamas Rv.......5,092	3. Deschutes Rv.. 3,351*
4. Rogue Rv & Bay.....4,290	4. Umpqua Rv N.F.......3,111	4. Nestucca Rv & Bay...4,780	4. Santiam Rv S.F.....4,742	4. Clackamas Rv.......3,283
5. Umpqua Rv N.F......3,749	5. Nestucca Rv & Bay...2,665	5. Umpqua Rv N.F.......2,556	5. Umpqua Rv N.F......4,468	5. Siletz Rv & Bay....2,532
6. Hood Rv........2,670*	6. John Day Rv.... 2,589*	6. Clackamas Rv.........2,117	6. Nestucca Rv & Bay..4,391	6. Nestucca Rv & Bay..1,904
7. Wilson Rv..........2,613	7. Clackamas Rv........1,495	7. Wilson Rv...........2,105	7. Santiam Rv N.F.....3,198	7. Santiam Rv N.F.....1,881
8. Umpqua Rv & Bay....1,535	8. Umpqua Rv & Bay.....1,454	8. Columbia Rv Lwr.....1,875	8. McKenzie Rv........2,958	8. Salmon Rv..........1,569
9. John Day Rv....1,511*	9. Wilson Rv...........1,321	9. Salmon Rv...........1,793	9. Hood Rv.......2,878*	9. McKenzie Rv........1,406
10. Clackamas Rv.......1,095	10. Hood Rv........1,169*	10. Hood Rv........1,696*	10. Deschutes Rv. 1,880*	10. Sanitam Rv S.F.....1,252
Streams Fished..92	Streams Fished...92	Streams Fished...92	Streams Fished..92	Streams Fished..92

1/ 1979 Catch Only

* Streams located within or above Columbia River Tribal commercial Fishing area.

Source: Oregon Salmon and Steelhead Sport Catch Statistics 1970-1979, Oregon Department of Fish and Wildlife, Portland, February 1981.

TABLE 4. Top 10 Summer-Run Steelhead Streams and catch for sportsmen, 1973-1978.

1973 Summer-Run	
1. Lower Columbia Rv	3,979
2. U. Columbia	3,631*
3. Snake Rv	3,620*
4. Toutle Rv(All Fks)	3,482
5. Cowlitz Rv	3,149
6. Kalama Rv	2,258
7. E. F. Lewis Rv	1,920
8. N. F. Lewis Rv	1,631
9. Klickitat Rv	1,290*
10. Washougal Rv	1,262

1974 Summer-Run	
1. Cowlitz Rv.	4,587
2. L. Columbia RV	4,521
3. Kamala Rv	2,739
4. Toutle Rv(All Fks)	2,660
5. Upper Columbia	2,234*
6. E. F. Lewis Rv	1,785
7. Washougal Rv	1,556
8. Klickitat Rv	1,249*
9. N. F. Lewis Rv	745
10. Skagit Rv	731
Streams Fished	106

1975 Summer-Run	
1. Toutle Rv.(All Forks)	3,001
2. Kalama RV	2,355
3. Cowlitz Rv	1,855
4. Washougal Rv	1,536
5. Klickitat Rv	1,241*
6. E. F. Lewis Rv	1,240
7. Green Rv. (King Co)	1,014
8. Wind Rv	965*
9. N. F. Lewis Rv	921
10. Upper Columbia	869*
Streams Fished	88

1976 Summer-Run	
1. U. COLUMBIA	6,239*
2. Toutle Rv(All Fks)	4,633
3. Lewis Rv(All Fks)	4,230
4. Kalama Rv	2,612
5. Washougal Rv	2,459
6. Cowlitz Rv	2,396
7. Green Rv. (King Co)	1,722
8. Methow Rv	1,616*
9. Wenatchee Rv	1,262*
10. Klickitat Rv	1,030*
Streams Fished	85

1977 Summer-Run	
1. Upper Columbia	7,448*
2. Lewis Rv.(All Fks)	6,484
3. Kalama Rv	4,937
4. Cowlitz R	4,654
5. Lower Columbia	3,290
6. Toutle Rv.(All Fks)	2,966
7. Washougal Rv(All Fks)	2,560
8. Klickitat Rv	1,963*
9. Wind Rv	1,923*
10. Skykomish Rv(All Fks)	1,849
Streams Fished	99

1978 Summer-Run	
1. Toutle Rv(All Fks.)	5,913
2. Lewis Rv.(All Fks)	5,711
3. Upper Columbia	5,253*
4. Cowlitz Rv	4,519
5. Kalama Rv	2,867
6. Green Rv.(King Co)	2,477
7. Klickitat Rv	2,442*
8. Washougal Rv(All Fks)	2,287
9. Skykomish Rv(All Fks)	1,990
10. Wind Rv	1,471*
Streams Fished	95

*Streams located within or above Columbia River Tribal commercial fishing area.

Source: Summary records 1973-78, Summer-Run Steelhead Sport Catch in Washington, State Game Department, Olympia, Washington.

Table 5.

ESTIMATED TOTAL COLUMBIA BASIN SPORT FISHERY HARVEST OF UPPER COLUMBIA RIVER DESTINED STEELHEAD, 1974-79.*

	YEAR				
STATE	1974-5	1975-6	1976-7	1977-8	1978-9
WASHINGTON	12,706	5,301	13,637	23,376	13,142
OREGON	21,329	12,460	16,943	19,338	7,063
IDAHO	3,000	closed	2,000	13,000	11,500
TOTAL	37,035	17,761	32,580	55,714	31,705

ESTIMATED TOTAL STEELHEAD CATCH BY COLUMBIA RIVER TREATY INDIAN TRIBES.*

	YEAR						
	1975	1976	1977	1978	1979	1980	1981
WINTER	265	969	3,000	4,500	3,300	2,600	1,000
FALL	7,000	8,800	31,700	15,800	5,900	4,800	5,200
TOTAL	7,265	9,769	34,300	20,300	9,200	7,400	6,200

*Sources: "Summary of Summer Run and Winter Run Steelhead Sport Catch in Washington" Washington State Department of Game, Olympia, WA. 1974-8.

"1970-79 Oregon Salmon and Steelhead Sport Catch Statistics" Oregon Department of Fish and Wildlife, Portland, OR. Feb. 1981. Tables 7, 8.

"Columbia Basin Upriver Salmon and Steelhead Stocks Status Information Relative to Consideration Under the Endangered Species Act" Idaho Dept. of Fish and Game Report, March 1979, P. 17. 1978-9 data unpublished, IDFG.

"Report Concerning Winter Commercial Seasons" Oregon Dept. of Fish and Wildlife, Washington Dept. of Fisheries, January 1981. p. 9

"Oregon-Washington Technical Staff Recommendations for the 1980 Inriver Harvest of Columbia River Fall Chinook Salmon" ODFW and WDF, July 30, 1980.

"Oregon-Washington Staff Report Relating to the Commercial Harvest of Upriver Fall Chinook in the Columbia River in 1981" ODFW and WDF, August 7, 1981.

BIOLOGICAL ANALYSIS OF COLUMBIA RIVER STEELHEAD

BY

THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

SEPTEMBER 28, 1981

The following is an analysis by the Columbia River Inter-Tribal Fish Commission regarding the status of steelhead of the Columbia River system.

The premise underlying the steelhead decommercialization bill S. 874 assumes that steelhead will be protected, and management facilitated through this legislation. Examination of the factual aspects of Columbia River steelhead and salmon runs and their management reveals that this assertion is incorrect.

Biologically, steelhead remain the strongest salmonid run on the Columbia River. Table 1 compares the various upper Columbia River salmon and steelhead runs, as represented by their numbers passing Bonneville Dam on the Columbia River, and Ice Harbor Dam on the Snake River. Steelhead returns to the Columbia have remained relatively stable, with the 1980 run declining only 2% from the 20 year average while all salmon species returning to the river show declines ranging from 8% to 65%. The continuing 1981 steelhead run is one of the strongest and already far exceeds the 20 year average. The 1981 steelhead run as of September 20 is 151,884. This compares to the total 1980 run of 129,166 which was the largest salmonid run above Bonneville Dam in 1980.

While most salmonid runs have suffered disastrous declines in the Snake River, steelhead returns in 1980 actually increased by 1% relative to the 18 year average as measured by Ice Harbor Dam counts. In contrast, salmon returns declined 75% to 96% during the past 16 year time period.

The comparative success of steelhead can be attributed to their ability to better survive the tortuous passage over Columbia and Snake River dams, and the fact that they are not subject to ocean harvest. These are perhaps the foremost causes of the decline of upriver coho and chinook runs.

The great natural runs of Columbia River steelhead which existed prior to the 1950s have indeed declined (although not so drastically as salmon runs), and for two primary reasons: environmental degradation and power dams. There are now 19 mainstem hydroelectric dams and innumerable irrigation projects on the Columbia and Snake Rivers which have drastically altered fish habitat. Because of these factors, natural steelhead runs have been largely replaced by hatchery runs. Today's hatcheries provide only a partial substitute both in numbers and quality, which existed before water projects decimated the natural steelhead and salmon populations.

Steelhead decommercialization is often defended on the premise that sport license fees pay much of the cost of steelhead hatchery propagation. This is not supported by fact. To our knowledge, not one of the some 30 hatcheries and rearing ponds that raise Columbia River steelhead in Washington, Oregon, and Idaho is operated and maintained solely by the sale of fishing licenses and punchcards. These hatcheries and ponds are funded almost exclusively by private and public power companies and the federal government as compensation for destruction of fisheries caused by the construction of mainstem Columbia and Snake River dams. Table 2 provides a list of Columbia River steelhead hatchery facilities above Bonneville Dam, and their associated funding entity. Figure 1 displays the location of these facilities.

The most significant federal legislation that provided for salmon and steelhead hatchery construction on the Columbia River is the Mitchel Act of 1938. Under that act five hatcheries and three rearing ponds for steelhead have been constructed as replacement for runs lost principally to upper

Columbia River mainstem power and dam development. Of those facilities, six, or 75% were constructed below Bonneville Dam. With the decision to place hatchery facilities downstream of the affected areas, it is understandable why the upriver steelhead runs have not been maintained at pre-dam construction levels. The severe decline of the Snake River runs of salmon in particular are clearly attributable to the failure of the federal government to provide compensation for lower Snake River dam construction; namely Ice Harbor, Lower Monumental, Little Goose, and Lower Granite Dams. Only in the last few years have hatcheries begun to come on line as partial compensation for these losses. However, federal dollars necessary to operate and maintain these facilities have been withdrawn for fiscal year 1982.

All contemplated future steelhead hatchery construction within the Columbia Basin will be built to fulfill hydroelectric compensation requirements, multipurpose water development enhancement projects, and on-reservation tribal fisheries enhancement programs. No expansion of steelhead hatcheries is being undertaken by the states and/or federal government and no funds have been appropriated in response to the Boldt and Belloni decisions.

Despite claims of the bill's proponents that upriver steelhead runs are in jeopardy due to overfishing, the upper Columbia River and its tributaries consistently support some of the largest sport fisheries for summer steelhead within Oregon and Washington.

In recent years the Deschutes River has consistently maintained its standing among the top summer steelhead sport fishing rivers in Oregon. It is important to remember that the majority of fish produced for this run originate from spawning areas within the Warm Springs Indian Reservation. It is interesting to note that the strongest supporters of this bill are currently raising money to pass the bill by a raffle and offering as one of the prizes a four day steelhead fishing trip on the Deschutes River.

We are proud that one of our tribal rivers is recognized, and wish to insure them the quality of the fishing experience will be maintained for future users. Of the annual statewide top 10 summer steelhead rivers in Oregon, 1 to 4 of those rivers each year are located within or above the treaty Indian commercial fishing area (table 3).

In Washington state, the top 10 summer steelhead angling rivers are also well represented by the upper Columbia River and its tributaries. Annually, for the years 1973-1978, 2 to 4 of the top 10 summer steelhead rivers are located within or above the Indian commercial fishing area (table 4).

In 1968, the four Columbia River treaty tribes brought suit against the state of Oregon, and the court verified the tribes' treaty right to catch and sell steelhead and salmon. As part of the interim settlement to that suit, they agreed to a 5-Year court approved management scheme, the 5-Year Plan. In exchange for their pledge to limit a treaty Indian commercial fishery for steelhead, the states and the federal government pledged that certain salmon runs would be improved to make up for steelhead losses. While the tribes reduced their fall season steelhead catch from 31,300 to a low of 4,800 in the five year period 1977-1981, the states and federal government have not kept their end of the bargain. Under the terms of the Plan, tribal fishermen are owed 370,000 fall chinook and 242,900 spring chinook. Figure 2 illustrates the terms of the plan and performance in terms of treaty Indian catch of fall chinook and steelhead. Table 5 compares the treaty Indian catch of steelhead and the non-Indian sport catch of steelhead for the period 1975-80. The treaty Indian steelhead catch since 1975 has consistently fallen below the 50% allocation guaranteed by the U.S. Supreme Court's decision in Washington v. Washington State Commercial Passenger Fishing Vessel Association.

Legislation classifying steelhead as a game fish has been in effect for non-Indians for some years, but has not eliminated commercial catch of the species by commercial non-Indian fishermen. Lower river non-Indian gillnetters continue to catch steelhead while fishing for other salmon, but often fail to report them to fishery agencies, thereby creating management problems. Agencies are aware that non-sport steelhead catches are inevitable because of the concurrent timing and mingling of steelhead with chinook and coho salmon in the fishery. Figure 3 illustrates the overlap in run timing of various salmon and steelhead stocks of the Columbia River.

Extending the game fish classification to cover Indian fishermen will simply compound ineffective regulations, and incomplete catch reporting problems.

The assertion that Indian commercial steelhead fishing has had detrimental effects on state economies and is costly to administer cannot be substantiated. Management of the Columbia River Indian and non-Indian fisheries has not required additional costly catch monitoring programs separate from other salmon fisheries management activities under the Boldt and Belloni decisions. This is due to the fact that there are no non-sport fisheries specifically for steelhead on the Columbia; steelhead are commercially harvested during fall chinook salmon seasons, and to a lesser extent during the January-March winter seasons. Data is therefore routinely collected concurrently with data collection for salmon catch. Additional costs, however, are incurred within Washington state's chosen duplicative practice of separately administering salmon and steelhead fisheries under the Washington Department of Fisheries and the Washington Department of Game.

In summary, the intent of S. 874 to decommercialize, and thereby presumably to protect steelhead through the elimination of treaty Indian commercial harvest cannot be supported by biological fact, administrative need, or management practicalities. The sole product of this bill will be unworkable reallocation of the catch; not conservation of the resource.

The problems facing salmon and steelhead in the Columbia River system can best be corrected if efforts are channeled into working towards fulfilling compensation, and addressing environmental issues that have long been identified by the tribes and all fishery agencies. The most pressing need at this time is for the Congress to reinstate the operation and maintenance funding for the lower Snake River compensation hatcheries. We ask all those who support this bill to join with us in making this request. We believe by working together the resource will be restored for the benefit of all.

Senator **Gorton**. We have another vote on the floor. We will begin with our next panel from the Steelhead Trout Committee as soon as we return.

[Recess taken.]

Senator **Melcher** [acting chairman]. The committee will come to order.

Before calling our next witnesses, I have a statement on this legislation which, without objection, I will insert in the record at this point.

[The statement follows:]

Prepared Statement of Senator John Melcher

The legislation before the Committee today, S. 874, has generated a great deal of interest as well as controversy.

In light of these circumstances I commend Chairman Cohen for scheduling an entire day of hearings thereby allowing a full airing of all points of view on the bill. This is, of course, in addition to a field hearing held in Seattle, Washington on June 29th.

After studying the bill, and reviewing the testimony and that of the June 29th hearing record, it seems to me that the two issues this committee must examine in considering S. 874 are: the treaties and the property rights involved.

The bill deals with commercial versus sport fishing. The treaties deal with steelhead and other fish in the river as a property right.

The bill, as stated most clearly in findings #2 and #5 sets forth the proposition that these treaties and the federal court decisions interpreting them have "had detrimental effects on sport fishing, on the economics of the affected States, and on the ability of the affected States to manage the species effectively and uniformly;" and "the value of steelhead trout to the economy as a game fish is substantially greater than its value as a commercial fish."

I hope the testimony presented today will enable me and other committee members to answer the following questions:

1. Is the economic-benefit argument as stated in the findings supported by the facts?
2. If so, are the economic pluses to be gained by the passage of S. 874 so substantial as to warrant the abrogation of treaties as well as the over-riding of Federal court, including Supreme Court, rulings?
3. And even if such is the case, does S. 874 provide the most equitable as well as the most sensible vehicle for resolving an essentially economic problem?

Thank you, Mr. Chairman.

Senator **Melcher**. Our next witnesses are Chuck Voss and Ralph Larson of the Steelhead Trout Committee and the Steelhead Trout Club of Washington.

Mr. Voss?

STATEMENT OF CHUCK VOSS, EXECUTIVE DIRECTOR, ASSOCIATION OF NORTHWEST STEELHEADERS, AND CHAIRMAN, NATIONAL STEELHEAD TROUT COMMITTEE

Mr. Voss. Thank you, Mr. Chairman.

I am not going to read the text of my statement and would ask that it be placed in the record.

Senator **Melcher**. Without objection, it will be inserted in the record following your oral testimony.

Mr. Voss. I would just like to make a couple of comments, if I may.

Before we broke for recess, it came to this. The biologist from the commission made our case for us. He pointed out that things are fine on the upper Columbia. I would like to point out the reason for that.

We worked hard—that is, the sportsmen of Washington and Oregon—to make sure that we decommercialized steelhead with the non-Indian commercial fishermen.

Just a few years ago we got them off the steelhead. They do not fish for them anymore. They kill some, of course, in the process of fishing for salmon, but the take is small.

In addition to that, the Indians agreed along with the commercials that everyone involved with the 5-year agreement. They did reduce their steelhead take.

Consequently, with the combination of a lack of commercial interest on the part of Indians and non-Indians alike, we produce more steelhead.

I would like to point out one thing very quickly. I am sorry that the representative from the Warm Springs had to leave, but he pointed out that the Deschutes River off the Columbia was a good river for sportsmen for steelhead.

I would like to point out to you that the regulations on the Deschutes River for steelhead is one fish. It is a hatchery fish for sportsmen. If you catch a wild fish you have to put it back in the water.

In addition to that, right up the river there is a big Indian commercial dip net fishery. So, that is the reason why the fishery is so good. We do not take a lot of fish anymore out of the Deschutes River.

The whole part of that Columbia system is because there has been a giant push back from the commercial interest, both in the Indian and non-Indian alike.

It was also mentioned about the Columbia River commercial catch of steelhead was for the Indians. We have it estimated at around $2 per pound for steelhead. We figure around 5,000 steelhead so far this year at about 10 pounds apiece.

That is approximately what it was and I am sure if the gentlemen could get to those figures he could see that. Maybe it is 10,000 either way, I do not know.

Let me read at this point one little piece out of my statement and then I would like to turn the microphone over to my colleague who can really answer your questions.

In my statement on page 3, I said:

> What we are trying to do here is to simply eliminate the commercial sale of steelhead trout. It is the business of a freezer truck backing up along side of a river and loading up steelhead trout for commercial markets that we are objecting to.
>
> It is the growing emphasis on the buying and selling of steelhead trout that we are trying to halt.

As you can see from the testimony from the Washington Game Department, the Indians harvested an average of 3.6 percent—53,700—steelhead. and 96.4 percent—1,422,700—salmon in the *Boldt* case area in Washington between 1976 and 1980.

You are going to hear from Mr. Larson and he is going to point out in his testimony that in the *Boldt* case area where we have 635 Indian steelhead fishermen, that 93.4 percent of them earned $3,000 or less netting and selling steelhead trout.

In fact, more than two-thirds of these Indian fishermen made less than $500 dealing in commercial steelheading. This is according to the fish tickets.

Please remember, gentlemen, that these are the steelhead that we are discussing today. The sea run rainbow trout that are being sold to commercial fish buyers are not the steelhead the Indians net and feed to their families or their tribes.

Because of time, I would like to give the microphone over to the representative of the National Steelhead Trout Committee who is the retired director of game for the State of Oregon, Mr. Ralph Larson.

[The prepared statement follows:]

Prepared Statement of Chuck Voss

Mr. Chairman and members of the Senate Select Committee on Indian Affairs. My name is Chuck Voss, and I am here representing the Association of Northwest Steelheaders and the National Steelhead Trout Committee. Together we represent more than 22,000 concerned steelhead trout sport fishermen.

More than 50 years ago the citizens of the Pacific Northwest, along with biologists, recognized the need to separate the steelhead trout from the very large and dynamic salmon harvest by the commercial fishing industry. At that time, the commercial nets were wreaking havoc on the dwindling steelhead trout runs, and the citizens from the State of Washington agreed that it was imperative to set aside these marvelous sea-run rainbow trout and not allow them to be destroyed by a gigantic commercial fishery.

When the law was passed in the State of Washington outlawing commercial fishing for steelhead trout, the sportsmen knew full well that the financing for enhancement, research, development, propagation, operations and maintenance for these gamefish would rest squarely on their backs. No longer would the state General Fund pick up the tab for steelhead.

Not one sportsman objected to the increase in license fees. Nor did they object to a punch card system, which also cost each sportsman more dollars. And frankly, we are still taking sizeable increases in our licenses and tags. We are still reaching into our pockets spending millions in the West to protect and enhance these sea-run rainbow trout.

The Federal Government is also spending some money for steelhead rearing. Why? Because they built cement superstructures in the middle of rivers, such as the Columbia, for hydroelectric power.

So the Fed is paying mitigation dollars for some steelhead runs they destroyed. But these dollars have not paid for the depredation and demise of specific steelhead stocks. And the Fed has not enhanced any steelhead runs. They have merely built a few hatcheries and told us that this is the best they can do. In addition, these mitigation funds are from taxpayers, of which there are several million in the West that also call themselves sport fishermen.

We've heard the tribes repeatedly say that the sportsmen are not paying for the steelhead going to the Upper Columbia. True, not with our fishing license money but, through taxes. However, we've yet to see the first Indian nickel come from their pockets for one steelhead, because they fish without fishing licenses or tags.

We believe that it is important to make the distinction between game animals, gamefish, and food fish. A game animal or fish is a species that, under tight regulations, can be harvested only on a very limited and controlled basis. This is necessary because, without rigid controls the species would eventually be annihilated. This is why laws were passed to stop the "market gunners" who made a great deal of money killing waterfowl for the commercial markets. This is also why the state Fish and Game agencies are so protective over their deer and elk herds. Frankly, these animals could not survive in a "shot to sell" commercial world.

And so it is with steelhead rainbow trout, a gamefish, according to the state laws of California, Oregon, Washington and Idaho. A gamefish so delicate that on the mighty Deschutes River in Oregon, no one is allowed to kill wild steelhead trout, except the Indians. Because, way up the river the Indians are dipnetting for steelhead and selling them, legally.

Fifty years ago when the citizens realized that in order to protect these sea-run rainbows, they had to eliminate the commercial harvest and did so with a law. So what makes us think that we can now commercially net these fish in our rivers today. And right in the face of all our dams, extraction of water for agriculture and some pretty bad timber practices?

Never mind someones Ancient rights for a moment, let us be concerned for this extremely important and delicate fishery. What is to become of it? Is it to be eventually destroyed by the Federal Government because their rules supercede natures laws and the natural order of things? Have we reached a point in our society where anything can be destroyed in order to make a buck?

Please understand that the steelhead fishermen are not asking that you disallow the treaty Indians from harvesting steelhead for their own consumption. That is not the purpose of this bill before you today. We are not asking you to take away that special right which the Indians have, according to the courts.

What we are trying to do here is to simply eliminate the commercial sale of steelhead trout. It's the business of a freezer truck backing up along side of a river and loading up steelhead trout for commercial markets that we are objecting to. It's the growing emphasis on the buying and selling of steelhead trout that we are trying to halt.

As you can see from the testimony from the Washington Game Department, the Indians harvest an average of 3.6% (53,700) steelhead, and 96.4% (1,422,700) salmon in the Boldt Case Area in Washington between 1976 and 1980. As Mr. Larson points out in his testimony today, in the Boldt case area where we have 635 Indian steelhead fishermen, 93.4 percent of them earned $3,000.00 or less netting and selling steelhead trout. In fact, more than two thirds of these Indian fishermen made less than $500.00 dealing in commercial steelheading.

And please remember gentlemen, these are the steelhead we are discussing today. The sea-run Rainbow trout that are being sold to the commercial fish buyers, not the steelhead the Indians net and feed to their families or their tribes.

The sport fishermen in the West have devoted many years of hardwork and constant vigilance in a continuing effort to keep the steelhead trout alive and well. We have fought off the non-Indian commercial gillnetters, we have spent years in state legislative hearings fighting for forest practices that would guarantee viable fishery habitat for spawning steelhead, and we have participated in literally thousands of hours of meetings devoting our time, money and energy protecting these great gamefish from being destroyed by hydroelectric dams, agriculture, sedimentation, chemical pollution and a host of other problems that our streams and rivers face day in day out.

And because our steelheaders have worked so hard, for so long, to protect this gamefish, it was a bitter pill to swallow when the Federal Government told us that commercial steelhead fishing is now the order of the day, regardless of what we say, think or do, we must yield to the higher order. Because this is your government speaking.

Frankly gentlemen, the citizens I represent cannot and will not accept a commercial fishery on this; the West's greatest gamefish. Obviously, there were no legislative hearings years ago as the great Atlantic salmon was slowly eliminated on the northeast coast of the United States. So, we very much appreciate the opportunity to come before you on this day to tell you of our great concern.

The treaty Indians are increasing their multi-million dollar commercial salmon fishery in the West and, in most cases, are doing very well. But, for those who generate a few hundred dollars each year for netting steelhead trout, this bill, under Section 6, would compensate the Indian fishermen for their small loss in income.

Again, we are not here to eliminate the catching of steelhead trout in nets by the treaty Indians, even though state law prohibits everyone else from doing so. Rather, we are here to testify for a bill that would eliminate the commercial buying and selling of these gamefish. We are here to ask you to support the proposed Steelhead Trout Protection Act because the future of that fishery is now in your hands. And, we think that the small number of treaty Indians selling steelhead trout could very easily be compensated.

We honestly and sincerely believe this bill is fair and equitable and we urge your support for its passage.

Senator MELCHER. Mr. Larson?

STATEMENT OF RALPH LARSON, REPRESENTING THE NATIONAL STEELHEAD TROUT COMMITTEE

Mr. LARSON. Thank you, Mr. Chairman.

I will stick to a fair amount of my written testimony, but I would like to interject a few thoughts along the way that I have heard today. I think we should clarify some of these.

Mr. Chairman and members of the Senate Select Committee on Indian Affairs, my name is Ralph W. Larson and I am here representing the National Steelhead Trout Committee, a committee dedicated to restoring the steelhead trout to its once mighty status as a game fish.

I appreciate being given the opportunity to present our views on this important legislation: the Steelhead Trout Protection Act.

Even though there have been some steelhead commercial fisheries on coastal reservations in the State of Washington for many years, it was not until 1974 with the decision in *U.S.* v. *Washington* that commercial fishing for steelhead became widespread.

It was difficult for the sport fishermen to understand the rationale behind defining "in common with" as meaning a potential 50-50 split of the resource between treaty Indians and sports fishermen.

It was even more difficult to understand the 90-10 split that occurred on reservation streams, since reservation, subsistence and ceremonial catches did not count in the 50-50 split.

The interpretation of sharing was also difficult to understand when the treaty with the Yakima Nation used the term "in common with" as related to roads on the reservation.

We have yet seen where the Yakima Nation has been willing to pay 50 percent of the costs related to construction and maintenance of highways on the reservation. It is obvious, to my lament, that "in common with" had nothing to do with equal sharing.

Sharing of hatchery reared steelhead trout is also difficult to comprehend. The treaties excluded cultivated oyster lands from Indian harvest indicating "artificial propagated or cultivated" wildlife was also excluded. Hatchery reared steelhead have not been financed by the general public as have salmon, but by funds generated by sport fishermen.

License fees and permit fees have provided the majority of funds for hatchery construction and fish rearing. Some Dingell-Johnson funds have been utilized in special rearing projects, but these funds are sport-fishermen generated.

Some anadromous fish funds have also been used, and these funds were also partially generated by sport fishermen who are also taxpayers.

However, prior to the time that anadromous fish money came into being, the sportsmen of the State of Washington supported entirely the steelhead trout management program of the State. Without hatchery-reared steelhead, the steelhead resource today would be a very minor fishery in the State. Sport fishermen funds prevented the decline of the resource; not the general public who condescended to permit development and destruction of the river environs.

If these hatchery-reared steelhead are to continue to be shared, the sport fishermen should be reimbursed for their contributions in maintaining the resource; not the treaty Indians.

The Indians would have little to fish for if it were not for the sport fishermen.

It is time, therefore, the balance scale of justice and for Congress to pass S. 874, thereby eliminating the inequities created by the biased and uninformed Federal court systems.

The multiple management concept of the steelhead resource that came about as a result of the *U.S.* v. *Washington* court decision acts as a strong deterrent to sound biological management.

Presently, we have three groups attempting to manage the resource:

No. 1, the Department of Game which has statutory responsibility;

No. 2, the treaty Indian tribes that assume the court decision gave them "co-management" rights; and,

No. 3, the Federal courts that have not the slightest understanding of the biological impacts of their decisions and do not appear to care so long as the decision favors the treaty Indians.

Comanagement assumptions have caused a great duplication of effort and personnel at the expense of the taxpayer. This concept has also caused many disputes based upon different philosophies of the "comanagers."

Disputes between the two groups are to be settled, hopefully, by a court adviser, before going to the courts. Decisions are usually a compromise, so that neither party is satisfied and only the resource suffers.

Decisions on harvest usually result in a compromise between the high and low figure—the high figure usually argued for by the tribes. The compromise may be more than the resource can stand, but supposedly everyone is happy.

The Federal court decisions have been ludicrous. When the Quinaults went to court to obtain a higher catch of steelhead because the hatchery plants from the U.S. Fish and Wildlife hatchery on the reservation were all made in reservation waters, the court ruled in their favor permitting an increased harvest above normal of over 9,000 fish.

The Quinaults caught 13,150 steelhead to the sport fishermen's 200 steelhead. Yet, in other river systems with no reservations, the sport fishermen must share equally the fish for which he paid.

Getting back to the numbers, I know the Quinaults quoted a different figure than 13,150. It was 13,000 and something. There is another figure that is available that says 13,500.

If one looks at the various testimonies today, we do not find that any two parties or even three, can agree on what the figures are for the catch either by Indians or sports fishermen.

It would appear, at some point in time, that hopefully maybe even the committee could request that those groups get together and decide on what the catches are so that everyone is talking about the same figures. There are no figures being presented today that agree with anybody else's.

The recent Federal court decision on the Columbia River would have to be classified as one of the worst on record. Despite a disastrous run of fall chinook and steelhead into the Columbia River, with no downstream commercial fishery, the court gave the Indians a normal fishing season above Bonneville Dam and indicated that the States of Oregon and Washington could not close the fishery, giving the Indians sole authority to do so.

The Indian fishery was given top priority and spawning escapement needed to perpetuate and preserve the runs of fish was a distant second priority.

Decisions, such as this one, should hasten the demise of the Columbia River fall chinook and steelhead runs which are already in jeopardy because of the losses caused by dam construction on the river system.

As an aside, Mr. Dompier tends to be a "lumper" and I am a "splitter." There are two groups of steelhead in the Columbia River called the A group, which is a spring run fish, and a B group, which is a fall run fish.

The A group is the one that now is in reasonably good shape and is above the 43- or 46-year average. The B group is at least 10,000 or 11,000 below the average for that particular run of fish.

The B group is the one that is in the river now and is the one that at least will be partially fished upon by that season in Zone 6 above Bonneville Dam.

We can talk about total numbers of steelhead and we can say that the steelhead runs are in great shape. If we split the runs out the way they are when they are managed, we find that the B group is not in fine shape, but is in very poor shape.

Continued fishing on that could really result in a strong decline in that portion of the steelhead run.

I feel that should be clarified before we get a misunderstanding that the steelhead runs are in good shape on the Columbia River.

It hurts me to think, after seeing the total numbers of fish in the Columbia, that finally the steelhead is the No. 1 fish in the river system when it was a far distance down the line once upon a time.

Maybe the hearing today should be on the salmon runs in the Columbia River because they are not doing so well.

Management requirements of the courts are causing problems related to the accuracy of catch information by treaty Indians. The validity of the numbers of fish caught is at times questionable.

This problem is not always caused by the treaty Indian fishermen but also by fish buyers. There is a reluctance to record fish catches as the numbers of steelhead caught near allocation.

A check of fish this year being sold in the California market could not be verified by recorded fish tickets. Nearly 1,000 steelhead had been sold from a river system that had already reached allocation numbers. This meant an overharvest of the resource which will result in future runs being diminished.

Other fish have been found in New York markets that never were recorded. Over 400,000 pounds of fish, some steelhead, were found in California markets that were illegally caught on the Columbia River and not recorded.

The present "multiple management" concept has not worked and will not work, except to the detriment of the resource. Therefore it is time to eliminate this destructive management concept. Passage of S. 874 will accomplish this end.

It must be remembered that the Department of Game was ill-prepared to manage a commercial fishery for steelhead during the first years after a *United States* v. *Washington* court decision.

Data necessary to manage a sport fishery alone was not adequate to properly manage a sport and commercial fishery. A much more sophisticated data base had to be developed, and this required time, personnel, and money. We feel that this lack of adequate data permitted an overharvest of wild fish; an overharvest that is difficult to control since nets cannot differentiate between hatchery and wild fish.

An analysis of the total steelhead catch in the catch area before and after the *United States* v. *Washington* decision indicates that the harvest is essentially the same: about 103,000 fish.

However, hatchery plants of steelhead by the State have increased by 46 percent since commercialization occurred. It is my understanding that with the Indian plants the plants have increased by 52 percent.

Increased hatchery plants should have increased the harvest, not merely maintained it. In reality, the wild stocks have decreased, and these plants have only masked this decline.

It is hard to imagine a poorer return of hatchery fish during this period than in earlier years since the quality of the smolts has consistently improved due to better diets and more effective disease control.

There are examples of this "masking" of steelhead populations in previous years. The Soleduck River, tributary to the Quillayute River, declined 13 percent in catch during the mid-1950's even with a returning plant of 25,000 hatchery smolts.

However, the Bogachiel and Calawah Rivers, tributaries also to the Quillayute River, declined 30 percent during the same season without any hatchery plants. The hatchery plant masked a significant decline in wild fish.

There is also a strong belief among many fish biologists that a density barrier exists in steelhead smolt plants where increased plants do not necessarily provide larger populations of returning adults.

We do not believe that the density barrier has been reached, so at this time increased plants should have increased adult populations. Most hatchery plants of steelhead, up until now, have been a factor of funding availability and hatchery space, not of ideal-sized plants for each river system.

Passage of S. 874 will eliminate any future overharvesting potential of the steelhead resource.

The management of the steelhead fishery, with the added emphasis on sharing as required by the Federal courts, does not work and is an expensive process as well.

The latest court decision on sharing specified that the harvest should be shared on a 50–50 basis, and the Treaty Indian catches on-reservation, as well as subsistence and ceremonial fish, should be a part of their 50 percent.

This latest decision has not materially changed the percent of steelhead caught by sport fishermen. On nine rivers or river systems with reservations, only three rivers have changed the catch percentage to the advantage of sport fishermen.

I refer here to table 1 in my prepared testimony, which I would ask be inserted into the record.

Senator **Melcher**. Without objection, it will appear in the record at this point.

[The table follows:]

TABLE 1.—INDIAN VERSUS SPORT CATCH IN PERCENT ON RESERVATION RIVERS 2 YEARS PRIOR AND 2 YEARS AFTER RESERVATION CATCH COUNTED AS PART OF INDIAN 50-PERCENT ALLOCATION

River	1977–78 and 1978–79		1979–80 and 1980–81	
	Indian	Sport	Indian	Sport
Elwha	50.9	49.1	62.8	37.2
Hoh	77.0	23.0	73.2	26.8
Nisqually	66.2	33.8	46.1	53.9
Nooksack	79.9	20.1	69.5	30.5
Queets	92.3	7.7	90.0	10.0
Quillayute	72.3	27.7	54.6	45.4
Quinault	98.2	1.8	98.5	1.5
Skagit	57.0	43.0	57.5	42.5
Skokomish	68.2	31.8	47.6	52.4

Mr. **Larson**. The remainder have steelhead catches dominated by the Indian fishery. The most glaring example is the Quinault River.

The Indian harvest during the two fishing seasons prior to the reservation catch counting as part of their share was 98.2 percent, and for the two seasons after, it was 98.2 percent. Where is equity?

Treaty Indian tribes receive approximately $6.6 million for fishery management purposes while the State battles each year to receive approximately $700,000 for their extra management costs required by the courts. Where is equity?

The tribes have in excess of 30 fish biologists plus technicians working on management programs in the case area and paid by the taxpayers money. The department of game can only finance a lesser number of biologists working on all fish management programs of the entire State. Where is equity?

The tribes have used up to 20 attorneys in some court trials. The State departments of fisheries and game share four attorneys, of which two and occasionally three are used in Indian court trials. Tribal attorneys are paid by the taxpayers. Department of game attorneys, by the sportsmen. Where is equity?

It is obvious that we who are sports fishermen, as well as taxpayers, are paying more than our share for less fish. Where is equity? It can only be achieved by decommercialization of steelhead.

Present extra management costs of the commercial fishery for steelhead exceed the value of the fishery. Department of Game costs, with the uncertain Federal funding, amounts to about $1 million per year.

The financial return to the Indian fishermen, at a maximum, has been about $900,000. It is obvious that the cost to benefit ratio is less than one to one.

If we add the funds expended by the tribes and the U.S. Fish and Wildlife Service to the management costs, the cost to benefit ratio declines even more.

With the present Federal fiscal problems, it would appear that these excessive management costs could be better expended for more justifiable programs. These savings can only occur, however, if steelhead are decommercialized.

I would like to ask at this time that table 2, Treaty Indian steelhead fishermen earnings—1979–80 be placed in the record.

Senator Melcher. Without objection, that will be inserted in the record at this point.

[The table follows:]

TABLE 2.—TREATY INDIAN STEELHEAD FISHERMEN EARNINGS, 1979–80

	Number of fishermen	Percent
Dollar value:		
0 to $99	224	35.3
$100 to $499	181	28.5
$500 to $999	84	13.2
$1,000 to $1,499	45	7.1
$1,500 to $1,999	23	3.6
$2,000 to $2,999	36	5.7
$3,000 and over	42	6.6
Total	635	100.0

Mr. Larson. The commercial steelhead Indian fishery benefits a minimum number of Indian fishermen. During 1979–80, some 635 treaty Indians fished for steelhead exclusive of the Quinault and Quileute tribes.

These two tribes provide only the catch of steelhead and not the information available from analysis of the fish tickets required at the time of sale of the fish.

Of the 635 fishermen, 35.3 percent sold less than $100 worth of steelhead; 28.5 percent sold between $100 and $499 worth; and 13.2 percent sold between $500 and $999 worth.

In other words, 77 percent sold less than $1,000 worth of fish. Only 6.6 percent sold enough fish to receive more than $3,000. The average value of steelhead sales to the 635 Indian fishermen was $843.79.

Decommercialization of steelhead, therefore, will hardly create an economic disaster for the treaty Indian fishermen.

There are few Indian fishermen who make significant landings of steelhead; 51.2 percent made only up to three landings during the 1979–80 season, and 75.4 percent made up to 10 landings. Only 7.9 percent of the fishermen made over 20 landings. Commercial fishing for steelhead is, at best, only a part-time occupation.

I refer here to table 3 and ask that it be placed in the record at this point.

Senator Melcher. Without objection, table 3 will be inserted in the record at this point.

[The table follows:]

TABLE 3.—STEELHEAD LANDINGS AND AVERAGE DOLLAR VALUE TO FISHERMEN BY NUMBER OF LANDINGS

	Number of fishermen	Total dollar value	Average dollar value per fisherman	Percent of fishermen
Landings:				
1	195	15, 105. 11	77. 46	30. 7
2	89	11, 050. 62	124. 16	14. 0
3	41	11, 232. 67	273. 97	6. 5
4	32	8, 505. 24	265. 79	5. 0
5	22	8, 822. 69	4, 011. 03	3. 5
6	29	13, 835. 55	477. 09	4. 6
7	18	8, 533. 69	474. 09	2. 8
8	17	13, 879. 18	816. 42	2. 7
9	16	17, 028. 55	1, 064. 28	2. 5
10	20	28, 524. 12	1, 426. 21	3. 1
11 to 15	67	109, 390. 66	1, 632. 70	10. 5
16 to 20	39	105, 480. 52	2, 704. 63	6. 1
21 to 25	17	28, 701. 72	1, 688. 34	2. 7
26 to 30	8	39, 796. 39	4, 974. 55	1. 3
31 to 35	10	38, 463. 51	3, 846. 35	1. 6
36 to 40	5	14, 845. 19	2, 969. 04	. 8
41 to 45	1	3, 050. 94	3, 050. 04	. 2
46 to 50	0	0	0	0
51 to 55	1	3, 166. 97	3, 166. 97	. 2
56 to 60	2	14, 933. 00	7, 466. 50	. 3
61 to 100	4	18, 734. 70	4, 653. 68	. 6
101 and over	2	22, 727. 43	11, 363. 72	. 3
Total 4,946	635	535, 807. 55	843. 79	100. 0

Mr. LARSON. The steelhead fisherman of the Pacific Northwest feel strongly that it is time to bring the mighty steelhead back to its former status as a "game fish" and to prevent further inroads into the wild populations of steelhead.

We, therefore, strongly support passage of S. 874, the Steelhead Trout Protection Act. The decommercialization of steelhead trout is long overdue.

I would also like to talk about a few things that seem to have been misconstrued during discussions today.

The Department's obligation, so far as monitoring the fishery under the court decision as required in *United States* v. *Washington*, was to monitor the sports fishery on a daily basis, essentially, to determine what percentage of the fish they were harvesting and determining when allocation was reached to close the fishery.

It also required a system to monitor the Treaty Indian fishery.

To do this requires a method known as creeling. We searched long and hard at the time to find a best method to determine sport catch on a day-by-day basis and on a weekly basis, and so on.

This system was the only one that had really been used in these United States and was the best one determined. But we can only monitor with the funds available between six and nine rivers a year.

To monitor all the rivers being fished by the Treaty Indians it would take at least 50 people working the entire steelhead season to get this data so that we could insure that fish were not caught above allocation.

The Nisquallys indicated that more fish were taken by sportsmen than Indians. That is true. We did not have enough people in those States to monitor the sports fishery because there were not funds available to do that.

Therefore, it is not because someone did not want to do it, but it is because it takes money to do those things and money is not available.

It was also interesting in reviewing the findings and facts and conclusions of law in *United States* v. *Washington* that only one Indian tribe had a name for steelhead. One Indian tribe mentioned its use in religious and subsistence purposes.

The rest became a lumper. They talked about salmon and put in brackets "which includes steelhead, of course."

Therefore, I do begin to wonder how important steelhead are in those particular aspects of the Treaty Indians usual and accustomed manners of living.

It would appear that if steelhead were an important part that more of them would have recognized it by some particular name because it was obvious that it came in at a lot different time and with a lot different kind of fish than the typical salmon being caught.

There were also discussions that hatchery fish are a lot smaller than wild fish. I measured fish in 1947–48, and 1948–49, and in the early 1950's on rivers where no hatchery fish had ever been planted. The average size of steelhead was 7.48 pounds, almost 7.5 pounds.

After planting hatchery fish in another river system which came in with a confluence and joined the other river in the estuaries, the hatchery fish averaged 7.5 pounds.

Therefore, when we talk about the big wild fish versus the small hatchery fish, we do not find that by the records we have available in the days when I was working in the fisheries.

You will find that when there are bigger fish being caught that the tendency will be that they are wild fish because there maybe are three fish that have been in the ocean an extra year. Maybe those that have returned are second-time spawners.

Those typically would be more in the wild fish category than you will find in the hatchery fish category. About 7 percent normally of all steelhead coming into Puget Sound streams return for the second time at least to spawn.

Seven percent of the fisheries make up those second-time spawners. So even though they have the capability of going into the fresh water, spawning and going back to salt water, the rigors of that particular transformation from fresh to salt and back to salt does take a significant toll in that particular fish.

These basically are the additional comments that I wanted to make. I appreciate the time that you have taken to listen to this testimony.

Thank you.

Senator GORTON [acting chairman]. Mr. Voss, on page 3 of your written testimony you state that the steelhead fishermen who spearheaded this proposal are not asking that treaty Indians be prohibited from harvesting steelhead for their own consumption.

Could you expound on that? Is that simply recognition of the fact that the bill permits treaty Indians to fish in exactly the same manner which non-Indians can fish? Or, is it the thrust of your position that the group which you represent would not object to an on-reservation net fishery for steelhead if all the fish were used for ceremonial or subsistence purposes and none of it sold commercially?

Mr. VOSS. Yes. We have said over and over again that the thing that we objected to was the sale of the fish and not necessarily because they were fishing fish; that is, steelhead and using them for their families or tribes. We do not object to that. We have never testified that we have objected to that. The only reason for our interest in this bill and pushing it so hard simply is the sale of the fish.

We understand that when the Indians are out fishing for salmon they are going to take a certain amount of steelhead. In some of those rivers they are going to take a lot of steelhead. We suggest they eat them, feed them to their families, or give them to other tribes. We do not want the sale of the steelhead.

Senator GORTON. I want to make this entirely certain. Then you do not object to Treaty Indians who are entitled to fish catching steelhead either on their reservations or even off their reservations incidentally to a salmon catch so long as they are not sold commercially; is that right?

Mr. VOSS. Yes, that is correct.

Senator GORTON. So long as they are simply used for subsistence or ceremonial purposes?

Mr. VOSS. That is correct.

Mr. LARSON. Senator Gorton, it would be impossible almost, for example, in the Nisqually which is a lake chum fishery which comes in at the same time as the steelhead. It would be impossible to regulate a fishery of that nature without some steelhead being caught. But, there are means of disposing of that fish without selling.

Senator GORTON. So as far as you are concerned, S. 874 should reflect that reality?

Mr. VOSS. Absolutely.

Senator GORTON. Either one of you can answer this, but perhaps it is a bit more for you, Mr. Larson.

You say in your testimony that "The passage of S. 874 will eliminate any future overharvesting potential of the steelhead resources." Why is that?

Mr. LARSON. You can regulate a sport fishery in many, many ways to eliminate and keep wild fish, as in the Deschutes. You can mark hatchery fish and the only ones that could be kept for example would be hatchery fish in a particular fishery where the wild fish have been depressed.

Senator GORTON. Nevertheless, I take it, it is necessary to regulate even the sports fishermen, and the inefficiency of a hook and line fishery is not so great that you are going to allow it to go on with any number of fishermen and for any length of time; is that right?

Mr. LARSON. Typically the regulations have permitted fishing to a point in a river system. Once your predominant runs of hatchery fish come to the system and you are getting into some of the later run wild stocks, then you move the deadline downstream so there is an opportunity to harvest some of those fish coming in.

But there is only a short area for harvest, so you limit how long those fish can be harvested. There are all kinds of regulations that you can impose to protect the wild fish. No, you have to regulate a sports fishery or they can also do damage.

The Samish River, for example, an analysis of that river was made that the sports fishery could harvest 65 percent of that particular resource in that river.

Senator GORTON. And that would be too much?

Mr. LARSON. In many cases that would be too much; yes.

In the bigger river systems, you would not have quite that problem because they are big enough that you could not catch a percentage of fish.

Second, the water conditions in the State of Washington, at least in the winter time, have to be reasonably good for sports fishermen to catch fish. In some years you have an awful lot of rainfall that sport fisherman do not get a chance to fish that long either. So, the potential is not there.

Senator GORTON. Is it your belief that it is easier to regulate and enforce a fishery which is limited to hook and line than it is a commercial fishery which obviously involves the use of nets?

Mr. LARSON. I feel so; yes. I think you can regulate—if you are going to have only a commercial fishery you can regulate fishing time and you have the people more concentrated with the sport fishermen all over the river system. So that might be easier.

But you still cannot control wild versus hatchery fish composition of the catch, based upon nets, because they cannot differentiate.

Senator GORTON. How much difficulty are you creating for your own position by stating that you are perfectly willing to permit an incidental catch of steelhead during the commercial Indian fishery?

Some of the Indian groups testified to the fact that non-Indian commercial fishermen obviously catch steelhead under similar circumstances. The thrust of their statements were that a significant number of those fish were sold commercially in spite of the law. Do you add considerably to the enforcement difficulties by permitting that incidental catch?

Mr. LARSON. Being sold is an assumption being made by people. I think we are talking about the Columbia River again.

At one time we made a proposal that indicated and acknowledged the fact at some time and in some river systems there would be steelhead caught in conjunction with existing salmon fisheries.

We had proposed at that point that those fish be stored or whatever in those areas where that normally would occur and those fish distributed basically to the various tribes when they needed a subsistence or ceremonial fish. So, we have been on record years ago in that area of espousing that philosophy.

Senator GORTON. Is the fundamental basis of your position, Mr. Voss, that all citizens should be treated equally and in their opportunity to harvest the steelhead resource without regard to their background?

Mr. VOSS. Certainly; yes. I feel strongly about that. However, we do recognize the fact that regardless of what happens in the future of this country that the steelhead would never be harvested equally by all citizens. There will always be a net fishery by the Indians. There is not a non-Indian who is allowed to net steelhead.

Senator GORTON. The net fishery?

Mr. VOSS. The net fishery has been eliminated by the Columbia River gillnetters on the Columbia River.

Senator GORTON. Mr. Larson, particularly in your statement, but to a particular extent in Mr. Voss', you cite a number of statistics about catch data and, for that matter, about sales of fish which have not been reported, and the like.

Is it possible for both of you to take a copy of your testimony and to include with it a citation of all these statistical assertions which you make in the course of your testimony?

Mr. LARSON. I am not clear on your question, Senator.

Senator GORTON. When you say that so many fish are being sold in California, for example, which are not accounted for in the system, what is your source for that statement?

Mr. LARSON. It was discovered by the U.S. Fish and Wildlife Service in California that a group of steelhead was being sold.

The Department, I understand, has some documentation on that particular phase. I can impose upon the Department or go down myself and compile those figures for you, if you so desire.

There was an arrest citation that came about on the arresting of a fish buyer. Those fish were discovered in New York and traced back to this particular fish buyer. That is a documented court case.

Senator GORTON. That essentially is what I am asking for. The assertions that you make in the course of your testimony of that nature need to be documented.

It is also the thrust of your testimony that the cost of the present system of management with two different sets of rules is simply greater to the people, to the taxpayers as a whole, at least, than the gross value of the Indian steelhead catch?

Mr. LARSON. Yes.

Mr. VOSS. Yes.

Senator GORTON. Is that likely to continue?

Mr. LARSON. So long as there is a commercial fishery and we are abiding by the *United States* v. *Washington* decision, that will continue if the resources continue to function ad infinitum.

Senator GORTON. Is it possible, in your view, to have the management system in which both the States and Indian tribes and courts are constantly involved and to do it rationally and to protect the resource?

Mr. LARSON. It is absolutely impossible. It cannot be done.

Senator GORTON. Senator Melcher?

Senator MELCHER. Thank you, Mr. Chairman.

Mr. Voss and Mr. Larson, I appreciate very much your testimony. You are throwing additional light on the situation, so far as I can determine it.

But I would like to ask you a basic question. How do you personally feel on the question of the property right which seems clearly to be provided for in the treaty?

It seems to have been part of the basis of the court cases.

As I understand the treaties, they were not drafted with regard to just eating fish. I think they clearly indicate that trading and bartering were contemplated. That, at this point in time, would mean the sale of the fish.

How do you handle that? This bill seems to be designed to set aside a particular point.

Mr. LARSON. I thought the bill set aside only to the point that claims could be filed and justifiably paid on the basis of the lost opportunity for catching steelhead.

I proposed at one time, and I found that Congress could not do it, that if the Congress could appropriate $10 million and invest it in Treasury bills and let the Indians have the interest off the $10 million, then they could get their $1 million a year, at least, for the steelhead that they are not catching.

If salmon enhancement does work—and it may or may not—then eventually if it does work and they now catch the numbers of more salmon to equal the number of steelhead they caught, then give them the $10 million and let them do what they wish.

That would be a reasonable solution, but I find that Congress cannot do those kinds of things, supposedly. This was one of our solutions toward handling that part of the problem; that is, paying for the loss of what you would call the property right.

Senator MELCHER. Would that not, however, come in the form of an offer? Would that not come in the form of an offer in lieu of the benefit established by a treaty? It would be an offer that could be tendered but not necessarily accepted.

Mr. LARSON. Yes; it might not.

Senator MELCHER. That is not the form of this bill.

Mr. LARSON. No; this bill basically is saying that the Court of Claims makes those particular settlements and makes that determination.

Senator MELCHER. The Court of Claims has been used to making settlements on the basis of the treaty rights. My question still is: Are you telling me, Mr. Larson, that notwithstanding the treaty's clear indication that this is a property right and that it could be something over and above eating the fish, this clearly indicates that bartering and trading could be done?

Mr. LARSON. I am sure there was bartering back in the first days after the treaty with fish and I am sure it is even documented that there was bartering that went on. So there really was some of that commercialization of that aspect in those times also.

Senator MELCHER. But nevertheless you are not advocating that the bill take the form of making an offer, or tendering an offer; is that right?

Mr. LARSON. No. I was advised by one of our representatives that the system that I proposed originally was not legal and that Congress could not do it anyway.

Those were the things when we were talking with the President's task force and those were things we have worked on to try to determine some reasonable solution to the basic problem.

The Indians could say to heck with it and they would not buy it. I do not know whether they would or not, but you have to have some kind of a carrot to have someone listen to you.

When somebody has four aces and a joker in their hand, and you are playing with a pair of deuces, it is awfully tough to get someone to listen to you.

Senator MELCHER. Mr. Voss, you can enlighten me on how you view this? Do you view it as clearly a property right established by the treaty?

Mr. VOSS. It is one which we have wrestled with continually. If you would come before 3,000 citizens in an auditorium and ask them that since we all pass laws in the State to protect an animal, like the elk and the deer, and we want to protect another game animal, and we no longer want anyone commercializing upon these animals because they are game animals which means, in the proper term, that they should not be harvested for commercial purposes, then we have a strong feeling toward that animal and we are going to protect it under all costs.

When it comes to the decision that was made in the *Boldt* court decision, then it was a bitter pill to swallow. We accepted the fact that they were going to take 50 percent of these fish. That was that.

The business of selling them comes down to the short strokes. The people in the West, who consider the steelhead as the king of the West as opposed to the Atlantic salmon as the king of the East, feel that there is no reason in their mind why the Indians cannot say: "Look, we say to them, 'Don't sell those steelhead to a fish buyer, but sell them to us some way.' "

We mean do not kill them. We will do the best we possibly can to see that they are paid for them. That is the way we feel about it.

Senator **Melcher**. Do you think the treaty contemplated bartering or trading, and referred in the language to that possibility?

Mr. **Voss**. I was there during the trial and I realized they did a lot of trading with Hudson Bay and so forth, and also with game animals.

Senator **Melcher**. Would that not be the same as selling them?

Mr. **Voss**. Yes.

Senator **Melcher**. I recognize the responsibility we have of maintaining the species as indeed the Endangered Species Act does. But this brings us to the point of whether or not your data indicates that the steelhead are declining.

I asked the Commission witnesses what their data was on that and they provided information on counts at Bonneville. I take it from your testimony that, while you are not disputing the Bonneville counts, you are talking about counts below Bonneville.

Mr. **Larson**. No. We are talking about two groups of steelhead in the Columbia River, both counted at Bonneville Dam and that determines their abundance. There is an early group called the A group, and we have a B group which comes later.

The A group is in good shape and the B group is not in good shape.

Senator **Melcher**. Which figures were provided to me, then, the A group or the B group?

Mr. **Larson**. The total, a combination of A plus B was given to you. That looks good when you look at the total.

Senator **Melcher**. You mentioned the figure of 10,000 or 11,000 in the group that was declining.

Mr. **Larson**. No; the B group, that is, the average of the B group for the last, as of 1979 group—we do not have the 1980 or later figures—it was the B group that was 48,000.

About now the count at Bonneville, as I understand it, was about 33,000. They are expecting that count by the time it is completed to be about 37,000, which is about 11,000 below that 43-year average. But the A group is going to be above that 43-year average.

Senator **Melcher**. Can you tell me why the B group is declining?

Mr. **Larson**. Not specifically. That group, as I recall it, is bound for Clearwater [River], which essentially the biggest part of it is a hatchery operation. The U.S. Fish and Wildlife Service hatchery is there. It had distinct problems of providing quality fish for many years after it was constructed. This was the Dworshak [National] Hatchery.

They lost significant numbers of fish in the rearing process. The fish were not of good quality, but they are now starting, it is my understanding, to improve it.

But those results may be a little early to see what they really are.

However, you have to go back to the history of the Columbia River to get down to the whole decline. We could see the decline. I worked on the Columbia River for almost 10 years exclusively. You could see the decline starting to occur with the completion of John Day Dam. That seemed to be the one dam that started breaking the back of the fisheries resource.

The fish going down through the reservoirs were being lost at large percentages. The fish that normally made it to the ocean in one period of time were now taking months because they had to swim the whole distance rather than coast with the current because there was no current in the reservoir.

They went through the turbulence and you lose fish at each one of the units and with each new dam built, that percentage loss is more and more.

So, the more dams they build the more the loss is. So when you start up here with the numbers, you end up with a small number when they get down to the ocean where they go out and get their size and return back as adult fish. It is a complex analysis that you basically have to make looking at what has really happened to the Columbia and Snake Rivers over the past 20 years in order to see why these things have become a problem.

Senator MELCHER. Is it fair to assume, then, that the decline in the B numbers that you are citing are not related to the amount of fish that were caught by the Indians?

Mr. LARSON. This is all part of it. In 1957, for example—and this is not Indian fishing—this was commercial fishing on the Columbia River.

In 1957 it was almost 680,000 pounds of steelhead caught in the commercial fisheries in the Columbia River. Going back farther—and I do not have that data—but I think you will find it was even higher than that at one time.

In 1979 it turned out to be 68,600 pounds. So you have a tremendous difference in the commercial harvest which permits more fish then to move on upstream.

The Indians by themselves are not depleting the fishery on the Columbia River. They are reducing their catch. The first year of the 5-year agreement they were up to 29,000, but they have since that point gotten down to about incidental catches of about 5,000 fish.

It is all little pieces of the total picture. But the dams are the biggest problem on the whole system.

We have maintained the runs in the Columbia River itself where the Snake and the Columbia come together and the Columbia River portion is reasonably close to about what the counts were when the first public utility dams were built. That was about 9,500 fish and it is still running somewhere close to that.

The hatchery plants and the management programs of the Columbia River itself have maintained at least the resource at a level that has been there for the last 10 or 15 years, but not what it was 50 years ago.

Senator **Melcher**. In your testimony, you talked about 400,000 fish, some of which were steelhead found in California markets. Excuse me, that was 400,000 pounds.

They were illegally caught in the Columbia River and not recorded.

First of all, I assume that the evidence indicated where the fish were caught.

Mr. **Larson**. Yes. The case has gone to court and the violators have been prosecuted.

Senator **Melcher**. Have the facts been determined? What was the outcome?

Mr. **Larson**. The outcome was guilty.

Senator **Melcher**. Were they Indians?

Mr. **Larson**. Yes. That was the *Mary Settler* case.

Senator **Melcher**. Going on down further in your testimony, you said that an analysis of total steelhead catch in the case area before and after the *United States* v. *Washington* decision indicates that the harvest is essentially the same. However, the hatchery plants of steelhead by the State had reached 46 percent.

The increased hatchery plants should have increased the harvest, not merely maintained it. Is that your testimony?

Mr. **Larson**. Yes.

Senator **Melcher**. What data do you have to indicate that the wild stocks have decreased in these plants and have only masked this decline?

Senator **Gorton**. Excuse me, Senator Melcher.

For Senator Melcher's edification, please distinguish between the Columbia River and what is called the Case Area.

Mr. **Larson**. The Case Area is the area from Grays Harbor north and includes the Olympic Peninsula and Puget Sound streams to the Canadian border.

Senator **Gorton**. Is it entirely separate?

Mr. **Larson**. Yes; two very difficult problems at this point in time.

Senator **Gorton**. Thank you.

Senator **Melcher**. Then the figures you have cited at Bonneville do not apply to the Case Area?

Mr. **Larson**. They do not.

Senator **Melcher**. I see. I thank Senator Gorton for that.

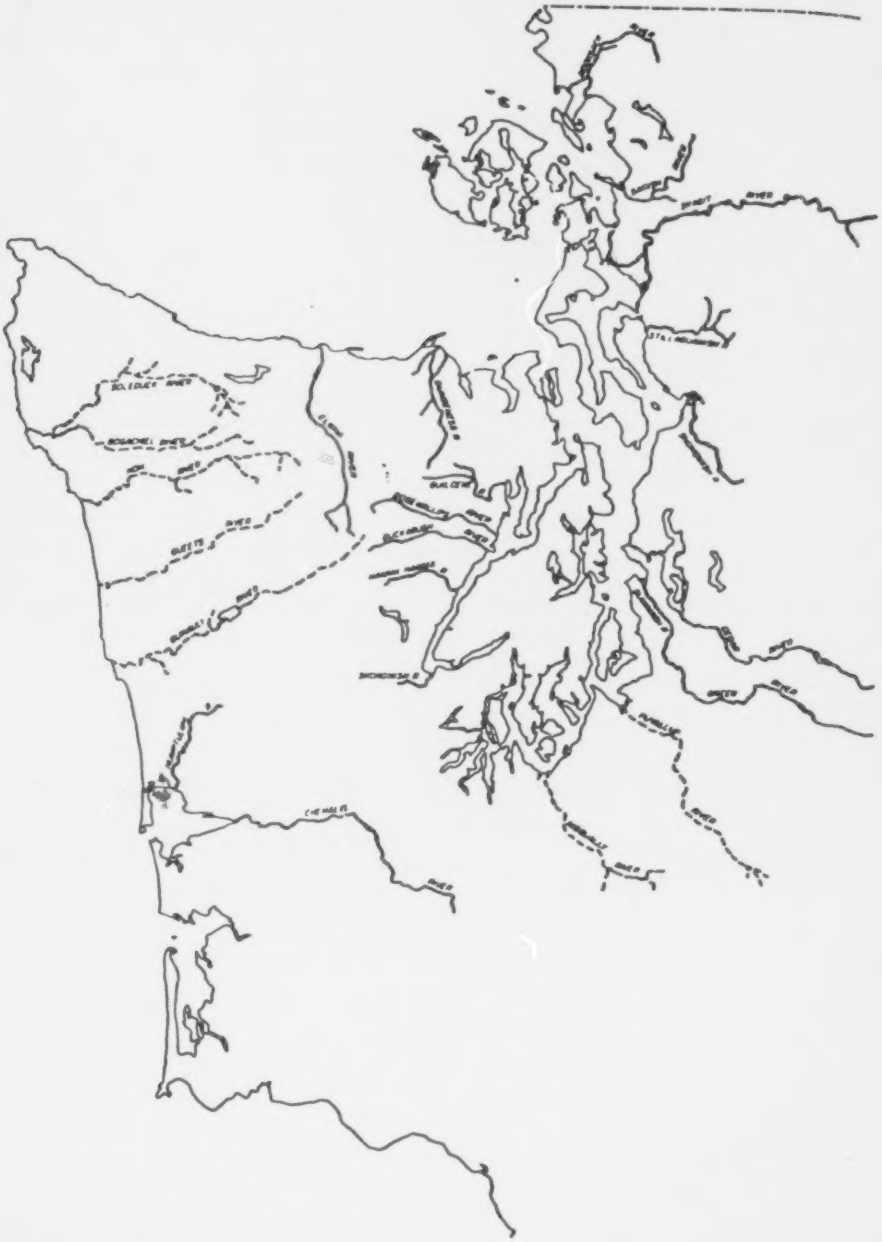
Mr. **Larson**. My analysis is this. When the catch is the same over a period of years and you increase the hatchery plants, which are designed to add to the adult fishery, that will occur in the river systems. Hatchery fish provide a percentage of return as adults once you plant them. Then the catch—if the wild runs were remaining basically the same—then the hatchery fish should have added on to the available stocks for harvesting by both the Treaty Indians and the sports fishermen.

But the catch remained the same, indicating that something had declined. It was not the hatchery plants because they had increased. So, it had to be the wild fish populations which are spawning in the river systems.

That is the only conclusion you can basically draw. Unless you have been planting inferior products when you increased the percentage, and the Department did not do that because there is better feed now for fish and the disease control factor is excellent.

THE CASE AREA

Streams of Northwest Washington State



The quality of the migrants has been excellent. Therefore, there was no increase; so something had happened. The hatchery fish, as Mr. Ayerst indicated because of their spawning time which is early, like February, did not contribute much to the potential rearing of the river system itself.

By the time they come out of the gravel and hatch as tiny fish, the food production in the river system is not adequate to give great survival.

The wild fish spawn about the first week of May and you will find that just about universal in Puget Sound. Those fish, when they come out of the gravel, come into a river system that even though it is not outstandingly productive, it is at least at maximum production stage. They are the ones that survive.

If there are lesser numbers of those surviving, then you end up with the river not rearing its full potential of fish. The best system you can have is when the river itself is rearing maximum potential and you can add hatchery fish to supplement that. That is when you have the best returns and the best fishery occurring.

Senator MELCHER. Mr. Larson, I appreciate your expertise in this matter, but do I properly understand that what we are dealing with in the Indian catch is 5,000 fish? That is, 5,000 steelhead in both areas; in the Case Area and above Bonneville on up?

Mr. LARSON. We are getting confused, Senator, from the standpoint of Columbia River versus the other.

The figures on the Indian fishery in the Columbia River, based on a 5-year agreement that the State of Oregon and the State of Washington, the two commercial fish agencies in the State, and the Indians negotiated indicated that they would not target on steelhead.

The steelhead they caught would be incidental to a fishery that would be occurring in those pools during a particular period of time.

They have been catching about, in round numbers, 5,000 steelhead per year in what they call the zone 6 fishery, which is above Bonneville Dam, incidental to their salmon fishery which is going on at the same time. That is where the 5,000 comes in.

Senator MELCHER. Can you place a number, then, on the other areas?

Mr. LARSON. The commercial catch is running somewhere between, depending on the year, 40,000 to 60,000 a year by the Indians, and somewhere in that area by the sportsmen.

The total catch had been 103,000, which is about the average. That is the catch of steelhead between both treaty Indians and sportsmen.

Senator MELCHER. In the case area?

Mr. LARSON. Yes.

Senator MELCHER. Does table 1, which I understand reflects the percentage of the catch, show the Indian catch as being more than their allowable harvest?

Mr. LARSON. In some cases, yes, and in other cases, no. I would have to go back and get the figures. I do not have that information as to what the harvestable numbers were in the river system. But I personally know that some of these are above what the harvestable numbers were defined at the start of the fishing season and others are not.

I think that we are seeing here is that in many cases, even if the harvestable numbers, for example, were 10,000 in the river, that you can be positive that the Indians can catch their 5,000. There is no question. They have first crack.

The question becomes: Can the sports fishermen fishing behind that fishery catch their 5,000? You can talk about opportunities all you want, but if they catch only 200 fish, then it is pretty hard to sell opportunity on the basis that there are some fish around and you ought to catch 5,000, which you cannot do.

Senator Melcher. That would be a rather unsuccessful trout fisherman.

Mr. Larson. Unless a stream has a large population of steelhead and unless the stream is heavily fished—and I am talking about streams around the city of Seattle where the main populations are—then you will not reach equity. I do not care how many opportunities the sports fisherman has. Unless he feels like he has some chance of catching a reasonable number of steelhead in season, he will not fish that stream.

Senator Melcher. What is the answer to my question? Did the sports fishermen, as identified as the catch on your table, catch as many fish as they were authorized to catch?

Mr. Larson. Yes.

Senator Melcher. They did?

Mr. Larson. In some cases, yes.

Senator Melcher. Does the table reflect it?

Mr. Larson. There are two river systems. I use the words "river system" because one of them is the Skokomish, which has several major tributaries which always are good steelhead producers.

The sports fishermen's catch is more than the 50 percent based upon the total catch in that river system versus the tribe saltwater fishing.

In some cases, because the tribe had determined to stop fishing at some point, there were more fish available, and in other cases it is because you have such a tremendous surge of fishermen on the river because it is so close to major population centers and the number of fishermen themselves catch the fish.

The same thing is true on the Green River where there is no reservation, and the sportsmen there are about, probably, in the 55–45 bracket with the sportsmen taking more fish than the Indians are.

The Indians have a right to catch more and at times the tribes have voluntarily quit. So, I give them credit in those cases where they have seen that and do it.

Senator Melcher. As near as I can determine, your testimony leads me to believe that you are concerned more with the Case Area than you are the area above.

Mr. Larson. We are concerned with the commercialization of steelhead no matter where it is. The biggest problem we are facing is because of the intensity of the fisheries in the case area, it takes on a more significant impact than does the 5,000 fish in the Columbia River.

Senator Melcher. Even if they do average what one of you mentioned to be 10 pounds each, I would suggest that 5,000 fish at 10 pounds apiece does not represent much commercialization. It is probably no more than what was contemplated in the treaties, in terms of bartering or trading.

In coming to the so-called Case Area, then you are saying that there is probably 40,000 to 60,000 steelhead that are caught by Indians. That is somewhat greater but does not seem to me to lend itself to a big commercialization venture.

Mr. Larson. What we are saying——

Senator Melcher. I am talking about splitting it up among the number of tribes.

Mr. Larson. This is what we were attempting to say; up to 60,000 fish are being sold commercially. We, as sportsmen, feel that we would rather see those fish not sold and utilized by the sports fishermen. Basically, they are the ones who have made sure the resources are still around. They paid for it.

Senator MELCHER. I can understand that point. I do not have any quarrel with that point, but I think what you are proposing in the bill is the rather heavy proposition of setting aside and, in effect, abrogating the treaty on the basis of 40,000 to 60,000 steelhead trout per year.

It seems to me that on that basis it is a question of what would be agreeable to the tribes involved. I assume there are several tribes involved in the Case Area.

I do not think the bill addresses that point, that is, of tendering an offer to the tribes which are involved. This has clearly been identified in the treaties themselves. I think you will agree this is a property right.

You can talk to me rather vigorously, as you both have, as to what the Western philosophy is—and I share it with you in terms of protecting a species—but I think you also understand what our Western philosophy is on basic property rights. That has not been resolved, so far as I can determine, to the satisfaction of the tribes whose property right it is.

Mr. LARSON. I thank you for calling it my bill, but it is not my bill.

Senator MELCHER. If I said that, I stand corrected. I do not mean that. I mean in the bill as proposed.

Mr. LARSON. No one has said that this is going to be that easy. I agree that part of the property rights is there and at some point in time, if the bill passes, I assume someone will have to be paid for taking a property right. I do not necessarily agree it is an abrogation of a treaty.

Senator MELCHER. You do not?

Mr. LARSON. No.

Senator MELCHER. I thought we had established that; we agreed it was a property right in the treaty.

Mr. LARSON. I think of abrogation of a treaty as being something a lot worse than you are talking about.

Senator MELCHER. Maybe I should say amending the treaty. It would be an abrogation or perhaps an unfortunate use of the word.

I want to thank you both for your testimony.

Senator GORTON. Our final scheduled witness is Lynn Greenwalt, former Director of the Fish and Wildlife Service, Department of the Interior, appearing today on behalf of the Northwest Salmon and Steelhead Council.

Mr. Greenwalt, you have waited a long time. I think everyone involved has been patient.

STATEMENT OF LYNN A. GREENWALT, REPRESENTING TROUT UNLIMITED AND NORTHWEST STEELHEAD AND SALMON COUNCIL

Mr. GREENWALT. Thank you, Mr. Chairman.

Mr. Chairman, I am here representing two groups: Trout Unlimited, which is a national organization committed to the well-being of coldwater fishes and the Northwest Steelhead and Salmon Council of Trout Unlimited which is an organization of sportsmen from the

State of Washington who have for many years been concerned with the future of steelhead trout.

Mr. Chairman, if there is no objection, I would like to summarize my testimony to give greater time to the committee for questions.

However, I will not be so brief as to avoid any pertinent points that I think I should bring up in this issue, assuming, of course, that my testimony can appear in its entirety in the record.

Senator GORTON. Without objection, your statement will appear in the record in its entirety following your oral testimony.

Mr. GREENWALT. There has been a great deal said about the natural history of steelhead trout in the course of these and other hearings. I think the committee is familiar with the concerns affecting the future of steelhead trout that have been developed over a number of years, including the often-enunciated, but not clearly understood question of habitat degradation, the intervention of dams and other impediments to the natural cycles of these remarkable fishes.

One of the things that may not have been fully appreciated during the course of today, at least, and in some previous hearings, has been the fact that one of the concerns uppermost in everyone's mind is the fate of wild steelhead trout runs.

The evidence, in my view, is clear that steelhead trout in general have enjoyed a harvest that has remained virtually undiminished over the years. Said another way and more succinctly, the same number of fish have been taken by commercial fishermen and sports anglers each year for a very long time, which says that the harvest of these fishes has remained essentially stable.

This ability to sustain a concentrated harvest on the part of this fishery resource is explained in the buffering effect of an extraordinarily effective hatchery program wherein hatchery fish are added to the streams. In the information I have reviewed it seems very clearly to have taken the strain, as it were, of the harvest.

At the same time there has been an increasing number of fish from hatcheries introduced into the streams. The supposition one can make is that since there was a greater number of hatchery fish introduced to the populations and the harvest has remained essentially the same, then it must follow that wild fishes have been impacted by this harvest level.

This may be true. I think I should make two points Mr. Chairman: No. 1, I have been innocent of any predetermined understanding of these matters until relatively recently: and No. 2, I think I have some insights into how many of these issues develop and occasionally deteriorate.

I think I can offer some observations. One of those is that if we assume that the interest of everybody involved is the well-being of steelhead, most especially wild steelhead, then we can very readily observe that it does the steelhead little purpose to examine and try to recapture history.

Something happened to those runs. There has been an impact on these fishes as certainly as there has been an impact on their close relatives, the salmon. We recognize this.

It seems to me something must be done about it and something that can be done begins as of this moment.

The groups I represent have looked, and have asked me to look, very carefully at the information surrounding the controversy and the concern about which I will speak a little more later.

It is quite clear that there is every indication that management of steelhead as practiced by those whose responsibility is to manage steelhead—and I speak in my presentation very largely of the *Boldt* case area of which I am most familiar—has been very successful.

The harvest is predominantly on hatchery reared fish. The escapement of wild fish appears to be increasing hearteningly along the way.

There is one fundamental problem, however, and that is that in spite of the relationships between the take of hatchery fish and those of wild origin, the total numbers are low. Where we once happily discussed harvests in the magnitude of 11,000 or 12,000 fish from a portion of a given river, the harvest is now 5,000 or 6,000.

Even though that harvest is managed in such a way that wild escapement is high, relatively speaking, and the harvest on hatchery reared fish is extremely high—which is as it should be—there is as a background to this kind of understanding something that transcends and escapes and eludes the purely biological.

There are strong political and economic and social overtones that have become extraordinarily pervasive, in my judgment.

The group I represent feels very strongly about this. They are frustrated and concerned. Everyone is concerned. It is evident from the testimony here today. There is a concern about how to deal with this difficulty of communication and this difficulty of understanding and this element, whatever it may be, that prevents the coordinated attacking of a problem the solution to which is of benefit to everybody.

The people I represent fully recognize that there is a traditional and ceremonial and indeed treaty right accruing to Indian citizens of this country, particularly in the Northwest.

We are doubly concerned that one dimension of this right has been the focus of difficulty for a long time and that is the commercial harvest of these fishes.

The group I represent proposes and supports this legislation to the extent that they would like to see the commercial taking of steelhead trout prohibited. We are concerned about the impacts that this might have on Indian fishermen and recognize that there are bound to be some impacts.

It is our impression that the bill suggests an opportunity for redress.

But let me say this. Our group feels sufficiently strong in its concern for the wild steelhead trout that they are proposing, and have agreed to do so in meetings just this past weekend, to seek State regulations that would prohibit the taking by sportsmen of wild steelhead trout; to forgo the opportunity, while there is still an opportunity to use wild runs in the way they are best used; to supplement and enhance, to perpetuate and increase the wild fish area.

Our group is prepared to forgo the taking of wild fish to this end because it is our collective judgment, and I think the Indian managers feel the same way, that given an opportunity properly to utilize wild runs they can be restored to some reasonable level.

This would eliminate, to a major degree, a dangerous dependence on hatchery fish, which, in my judgment, becomes somewhat tenuous for a couple of reasons. One of them is biological.

It has been suggested that there is a point of diminishing return beyond which the utilization of hatchery fish is no longer productive.

Hatchery management and the production of fish in a hatchery are expensive. We know that both the State of Washington and all elements of the Federal Government are going to be deprived of funds. The State of Washington, I am informed, is facing a $12 million shortfall. That is to say, funds they expected to get and will not receive from revenue, plus a 10-percent reduction.

The Federal Government, in the fishery management area, is facing reductions that approach 50 percent in the next 2 fiscal years.

My suggestion then is that there is an opportunity and perhaps an obligation, to begin to look at how to use the wild runs to do what wild runs do best. They live and survive and indeed thrive in these environments given an opportunity.

We should take hatchery fish where they can be managed. I think the fishery can be managed very exquisitely in most areas to take predominantly hatchery fish. One day it may occur to some of us, all of us, that it is prohibitively expensive to rely exclusively on hatchery fish which is largely what we are doing right now.

The importance of the support of Trout Unlimited and the Northwest Steelhead and Salmon Council of this legislation is centered around the idea that there is a desire to find a solution to this problem and that this legislation or some modification of it will achieve a concertiveness of action, a cohesiveness of concern about the future of these fishes. That is what we are seeking at present.

It would appear that the most immediate solution to the social, biological, and political problem that have confronted everybody in connection with these resources is to eliminate the commercial taking of these fishes and to concentrate ourselves collectively on the restructuring, the reconstruction, the rehabilitation, of wild runs and the environments that support them.

Mr. Chairman, it appears to me that given the political situation and the intense emotion that occasionally arises from this subject, it may be that only the Congress can resolve this issue at the present time.

I would be glad to answer any questions you might have.

Senator GORTON. It is my understanding, Mr. Greenwalt, that you have some quite interesting data in the form of graphs and tables on which you have based much of the testimony you have given us today.

Do you have sufficient copies of those to permit them to be part of the record?

Mr. GREENWALT. I have those. They are my own examinations of information provided to me by the Washington Department of Game, especially for this purpose.

I think it is fair to say, first of all, that the data rather clearly indicate that there is no question about the efficacy of management as it is practiced today.

This says nothing about whether or not this is adequate to assure a fishery into the future as people would like to have a fishery in the future. It says nothing about who was at fault in the past because, I think, debates about who was at fault in the past may be fascinating, but have little impact on the fishes in the future.

I would be glad to make whatever I have available and whatever numbers the committee can duplicate. I am totally and personally without duplication facilities.

Senator GORTON. That would be helpful.

Without objection, that material will be inserted in the record along with your prepared statement.

I would like for you to expand a bit on what you consider to be the importance of the preservation of wild stocks.

In doing so, has the data which you examined indicated to you that wild stocks are close to imminent danger of extinction or permanent injury on any or all the river systems which you examined? Do we have an emergency situation in connection with wild stocks?

Mr. GREENWALT. Let me answer that specifically. I think there is no emergency situation that would approach qualification for application of the Endangered Species Act, for example.

I think that is far from being a concern.

I would say that the emergency, if that is a fair term—and it may be one that is a little too strong—lies in the fact that if there continues to be a sort of acceptance of the idea that hatchery production and the utilization of that form of enhancement will solve everybody's problem, then there is something of an emergency.

I submit that hatchery production alone is not a guarantee that the problem will be solved, and, second, there is no guarantee that hatchery production can continue because of the increasing costs of that activity.

Even that circumstance, plus the fact that most of these streams seem to be capable of sustaining a greater number of fishes in the wild runs than they presently are, then I would say it is time to look at the role of hatchery production.

I do not think there are any streams in which the wild runs, in general, are in jeopardy. One must remember, however, that a combination of some kind of extraordinary harvest caused by a misinterpretation of a run prediction or some such thing, plus a problem with stream flows or an offshore disaster could literally wipe out a year class.

Each time a year class of a wild run is eliminated, then when it comes time for that class to have been represented postgraduate, it is not there.

These kinds of jeopardy present themselves, I think. None is so critical in my interpretation of the data that we have to assume that a solution is going to require draconian measures.

However, I think there is this very real concern about there being an opportunity which may not last forever, and behind that, the real concern I have is about the tendency always to depend on artificial populations because I think that is fallacious.

One cannot, in my judgment, count on artificial populations over time simply because they are so expensive to maintain.

Senator GORTON. Senator Melcher?

Senator MELCHER. Thank you, Mr. Chairman.

What number of rivers have you looked at yourself?

Mr. GREENWALT. I have looked in detail at 15 rivers in the case area which represents, as I recall, something on the order of 75 to 80 percent of the total take.

I have looked at all the rivers in the *Boldt* case area to ascertain that the trends represented by the 15 rivers are reasonably close. They are remarkably close.

Said another way, the 15 rivers reflect the trends sufficiently well so that I am confident that what I have interpreted for the 15 rivers is representative, in general, of all the rivers of the case area of which there are well over 100.

Senator **MELCHER**. Well over 100?

Mr. **GREENWALT**. Yes.

Senator **MELCHER**. On how many of those rivers would you say that the harvest by a tribe, or more than one tribe, could be called commercialization?

Mr. **GREENWALT**. I think that commercialization in the sense that the fish are taken and sold may occur on perhaps a dozen of the 15.

Perhaps there are a few more because there are people who may take just a fish or so.

Senator **MELCHER**. Is that a dozen of the hundred or a dozen of the 15?

Mr. **GREENWALT**. A dozen of the 15. I would not want to offer conjecture about the hundred because I do not have an appropriate history of those 100 rivers.

Senator **MELCHER**. Am I to assume that commercialization means a sale of one or more fish?

Mr. **GREENWALT**. In my terms; yes.

Senator **MELCHER**. So, we are talking about 40,000 to 60,000 fish?

Mr. **GREENWALT**. That is right.

Senator **MELCHER**. We are talking about 40,000 to 60,000 steelhead trout that end up in Indian hands; some may be eaten individually by families but in general, most would be sold; is that correct?

Mr. **GREENWALT**. By and large; yes. Once again, our concern is only about those which would be sold.

Senator **MELCHER**. I understand.

I gather from what you have told us that in none of those streams does the steelhead appear to be headed for extinction; is that right?

Mr. **GREENWALT**. In the immediate future; no. But that is based upon all things remaining as they are.

Senator **MELCHER**. I assume you have consulted with the Department of Game in Washington on preparing your data?

Mr. **GREENWALT**. Yes, they gave me raw data of the kind I requested; yes.

Senator **MELCHER**. But of the dozen or 15 rivers that you talked about, you are talking about your own personal observations; right?

Mr. **GREENWALT**. Yes.

Senator **MELCHER**. If I understand you correctly, you are saying: "Well, of course, you can stock the streams with hatchery fish and steelhead," but you are concerned because you believe the wild steelhead is crucial to the perpetuation and continuation of the species?

Mr. **GREENWALT**. That is my feeling, yes, because wild reproduction can be counted on. I do not think one can count on the perpetuation by means of hatchery fish.

Senator **MELCHER**. What in your view is an adequate escapement percentage to insure the perpetuation of the wild run?

Mr. **Greenwalt.** About 70 percent.

Senator **Melcher.** Do you know what the escapement percentage is for the wild runs of steelhead on those rivers where the State has comprehensive statistics, or that you have?

Mr. **Greenwalt.** I have statistics provided to me by the State of Washington on four rivers that have been looked at very carefully by them.

I might say that this is a part of a management operation research program carried on by the State for about the last 4 years, which provides the kind of information which I feel to be utterly vital to the appropriate management of these kinds of fishes, particularly steelhead.

It is possible to examine the take in terms of its component as to hatchery origin, wild origin, and the take by sportsmen and the take by Indians and to calculate the escapement.

All of this is extraordinarily important to manage a resource at the level of detail that seems to be necessary in the Northwest.

In the four rivers for which there are data and at which I have looked, escapement has run at least 60 percent and has been as high as 88 percent, as I recall, in the wild stocks.

That is as it should be. That is a fishery manager's dream.

In percentage it can be elusive and in some ways misleading because 88 percent of 100 fish is quite a lot. It is not so much the 88 percent of 1,000 fish, but in general, the idea of a 70 percent escapement is a good one.

I might say parenthetically that I understand unofficially that that very same research that has been going on for 4 years and will be accumulating even more data of even greater value in the next few years will probably end within 60 days unless funds are found to support it. It simply cannot be supported any longer. The funds to do it are not there.

Senator **Melcher.** There are four rivers that have been examined; right?

Mr. **Greenwalt.** In this fashion; yes.

Senator **Melcher.** Would you recommend that the same type of data and information be gathered on other streams?

Mr. **Greenwalt.** I would definitely recommend it as well as a long-term commitment to maintain these kinds of records which are vitally important to everyone. That is also the kind of information I think, Mr. Chairman, about which biologists and managers can agree in terms of its origin and its validity.

They may not want to agree about the interpretation, but at least they can agree on the fundamental information.

Senator **Melcher.** On page 4 of your testimony you say that the data in hand indicates that management efforts are biologically successful and that the proper allocation of the fragile and heretofore diminishing resource is being achieved.

That speaks directly to the wild run in the steelheads; right?

Mr. **Greenwalt.** Yes; the management of this resource seems to be managed in a biologically sound way. A greater harvest is being taken off fish of hatchery origin and the wild fishes are being permitted, in large measure, to escape, which is as it should be.

Senator **Melcher**. Can you supply us with the background data that you have?

Mr. **Greenwalt**. Yes.

Senator **Melcher**. Thank you.

Senator **Gorton**. Without objection, that material also will be placed in the record along with your prepared statement.

Senator **Melcher**. I want to thank you very much.

[The prepared statement and other materials submitted by Mr. Greenwalt follow. Testimony resumes on p. 293.]

PREPARED STATEMENT OF LYNN A. GREENWALT, REPRESENTING TROUT UNLIMITED AND NORTHWEST STEELHEAD AND SALMON COUNCIL, THE WASHINGTON STATE COUNCIL OF TROUT UNLIMITED

Mr. Chairman, it is a pleasure to appear before this subcommittee to discuss the critical issues of steelhead trout management in the Pacific Northwest. I am speaking today in behalf of Trout Unlimited, a national organization committed to the well-being of coldwater fishes throughout North America, and for the Northwest Steelhead and Salmon Council of Trout Unlimited, an organization of sportsmen from the State of Washington who have for many years been concerned with the future of steelhead trout.

As the members of this subcommittee are aware, the question of the status and probable future of steelhead trout in the Northwest has been a thorny one for some years. This popular game fish—perhaps the most prestigious game fish in all of North America— has never been abundant, certainly never as numerous as Pacific salmon, with which the steelhead trout is often confused by the uninitiated. The steelhead trout is the sea-run version of the freshwater rainbow trout and is unique because its life cycle includes a two or three year sojourn at sea, after which it returns to its natural freshwater stream to spawn. Unlike Pacific salmon, the steehead trout will return to sea after spawning and may repeat the process two or three times during its lifetime.

The steelhead trout, like the salmon, has been affected over the years by the impact of environmental change: the construction of dams that interfere with upriver migration of the adults to spawn and the downstream migration of both juveniles and adults to the sea; the siltation of gravel beds due to poor logging practices has reduced the amount of spawning habitat in which eggs will survive; the diversion of water for irrigation and other purposes has affected flows of water necessary for the maintenance of rearing habitat—in short, all these fishes have felt the effect of human alteration of their natural environment.

One result of all this has been a steady decline in the total number of wild steelhead in the last several decades as compared to the period before man became active in the business of using natural resources for his own benefit. Of course, no one knows just how many steelhead there were in those times past, simply because there was such comparative abundance of these resources that it was inconceivable that they could ever be significantly diminished. This has been typical of all of the fish and wildlife resources of this country: The nation was so blessed with overwhelming numbers of wildlife that it was not believed that they could be overexploited, and no need was seen for any kind of orderly inventory Only in more recent times, as it has become evident that wildlife numbers can be diminished—if not eliminated altogther—has an effort been made to take stock of what is there and how best to use it.

The steelhead trout has been given management consideration for many years, with some dramatic changes made in the way this resource might be used. Fifty years ago the States of Washington, Oregon, and Idaho stopped the commercial harvest of steelhead, concerned even then with the impact that an increasingly efficient commercial harvest would have on the steelhead. As the streams of the region were modified to provide for power generation and irrigation, the addition of fish hatcheries was used to mitigate the effects those projects would have on steelhead and salmon. This was a dramatic change in the management of steelhead: the supplementation of wild populations by an infusion of artificially-reared domesticated fish. These major and significant changes in steelhead management were accompanied by shorter-term adjustments in season lengths and season limits, including the imposition of the punch-card system for keeping better track of the total harvest of these fish.

There have been social changes that have affected steelhead as well. A growing population in the Pacific Northwest has brought on a sharp increase in the number of fishermen who seek this remarkable game fish. Increasing interest in the fish as a recreational resource has, naturally, required a greater attention to the management of the fish, with attendant season adjustments and refined regulations designed to protect fish in various river systems as their annual run numbers have fluctuated or other events have dictated.

Another social change occurred in 1974, when a long-standing concern about the rights of Indians resulted in a federal court decision that provided that Treaty Indians had a right to a specific share in the fishery resources of the area. This decision, as we all know, has resulted in the opportunity for Treaty Indians to harvest steelhead for commercial purposes. The focus of your subcommittee's concern today is upon that dimension of the use of steelhead trout.

One of the immediate results of the Boldt Decision was the necessity for the several Indian tribes and the state and relevant federal authorities to effect a cooperative management program for these fish. An appropriate sharing of these resources demanded a much more refined management system than had ever been in place before, one that took greatest possible advantage of the use of fish hatcheries and a clear recognition of the role of wild steelhead runs in the management of the harvest.

A basic concern adopted by everyone involved has centered around the wild steelhead. It must be remembered that wild steelhead never existed in abundance and that a decline in those populations, unless arrested in some way, will result in the loss of this valuable resource, leaving only the relatively uncertain and increasingly expensive use of hatchery production to maintain the fishery.

The data at hand indicate that management efforts are biologically successful: the proper allocation of a fragile and heretofore diminishing resource is being achieved. Even so, it is important to understand that the steelhead resource remains in jeopardy and can be lost.

There are several reasons this is true, and the presence of these factors are reasons we support this legislation.

The future of a steelhead fishery, in the long run, will depend on issues other than biology. It is clear that this resource cannot flourish in an atmosphere of controversy and conflict. The conflicts that have arisen from the commercial harvest of steelhead trout have come to constitute a barrier between the users of this resource. Cooperative efforts are hampered; attempts at negotiated settlements have broken down; energies and funds have been diverted to litigation and legislation that would have been better used in direct support of the resource.

In the history of resource management in this country, it has been demonstrated repeatedly that political support for management—for capital and operating funds, for personnel, and for effective regulation and enforcement—is achieved only when all the users have an enthusiasm for and support of what they see to be fair and equitable. Without the elimination of the frustrating and demoralizing social barrier represented by the commercial harvest of what has traditionally been a game fish, there will be a continuing decline in support for habitat improvement, effective fishery management, and an overall commitment to the future of steelhead trout. This can be as deadly to the resource as any overexploitation or habitat loss. The passage of this legislation will remove that social barrier and set the stage for renewed and vigorous cooperative support of the resource and its values.

We do not propose any infringement upon the Indian's cultural use of steelhead. We respect and value the cultural heritage of the Indian community because we too have a cultural tradition. The opportunity to pit our skills and tenacity against a remarkable wild fish and to pass those skills and opportunity to our children is a value we cherish. We know that these values transcend the mere landing of a steelhead; through exercising this tradition we are able to instill in our children an understanding of and respect for the importance of habitat, good sportsmanship, the compliance with regulations, and a reverence for wild things and man's relationship to them. Of equal importance, in the long run, is a related growth in our understanding of the traditions of other cultures. The social value of this is obvious, Mr. Chairman. We fear that these values may be lost for everyone, as will surely happen if there are no longer any fish.

The economic values of steelhead trout have been debated and argued. Notwithstanding the confusion about the validity of the arguments, the economic issue is a real one. Wild steelhead trout are a part of nature's bounty and represent no cost to the beneficiary. Unfortunately, this natural and apparently costfree resource is no longer something to be taken for granted. Steelhead fishing is presently very much the product of an economic investment far from free and costing more each year. For most of the history of artificial supplementation of steelhead, the major share of the cost has been borne by sports anglers. The rest has been supported largely by the general taxpayer nationwide.

Fortunately, there is an economic benefit that outweighs the cost. Sportsmen spend money. That money finds its way into all sectors of the economy. The revenue has been calculated variously, but is certainly well over $100 for each sportscaught fish. The benefits are widely distributed and contribute to making recreational fishing one of the leading revenue-bearing activities in the state.

The steelhead represents a substantial economic benefit to tribal fishermen, returning at least $800,000 a year to these Washington State fishermen. There are about 150,000 sportfishermen who seek steelhead trout in Washington State alone and who all contribute to the economy of the state by that effort. About 2,000 Treaty Indians are commercial fishermen. In a recent-year steelhead summary showing 62,000 steelhead were sports caught and 49,000 steelhead were commercially caught, it is clear that the economic impact of sports anglers is much greater than that of the commercial fisherman.

Mr. Chairman, we know that passage of this legislation will have an immediate economic impact on many individual commercial fishermen. We see the legislation as providing an opportunity for a redress of those impacts.

In the longer run, we believe the opportunity for the tribes to share in the economic benefits of sportfishing is real and has merit, in spite of arguments to the contrary. In addition, we see this opportunity as providing additional political and social support needed to assure the perpetuation of the resource.

Mr. Chairman, I see no reason to be critical of the biological management of steelhead trout as it is now being conducted. In looking ahead to the long-term fate of this resource, I am not optimistic. Biology alone cannot do the job. The resources of the country have always been most dramatically affected by the forces of economics and social pressure. Unless these forces are recognized and dealt with, the application of even the best management schemes cannot succeed. This legislation is not a small matter; it is a dramatic and serious step. We are concerned that if some strong measures are not taken now, even the optimistic view of the future that present-day management offers is likely to be short-lived. It is entirely possible that what is being done now is not enough; we believe that we cannot wait to see if success will come as a result of the present management scheme.

With this in mind, Mr. Chairman, we of Trout Unlimited and the Northwest Steelhead and Salmon Council are prepared to recommend to the Washington State Department of Guam—as we propose to do in the near future—that there be a moratorium placed upon the harvest of wild steelhead trout. In short, our alliance of sport anglers is willing to forego the harvest of wild steelhead to assure the maximum possible enhancement of wild runs.

We will do this regardless of the fate of the proposed legislation. We think that commercial harvest of steelhead is inappropriate and we, therefore, support legislation that would prohibit any commercial harvest. We understand and respect the Indians' traditional right to harvest steelhead for ceremonial and subsistence purposes and would not propose that this be suspended in any way, unless the Indian tribes elect to do so of their own volition, further to protect and enhance the wild runs.

Mr. Chairman, I want to stress our group's lasting and unqualified commitment to the continued existence of wild steelhead trout. We are willing to forgo further harvest of the wild stocks of steelhead until there is assurance that the runs are building and they are filling the habitat that remains available to them. In the meantime, we pledge ourselves to the continued effort to improve habitat for these fish and to help assure that the authorities responsible for fishery management—Indians, state and federal—are funded and manned to enable them to manage and enhance the fishery resources of the area.

We do not take this position lightly; we believe that dramatic measures must be taken if the wild steelhead fishery is to be sustained and preserved. We believe that only the Congress can resolve the issue now.

Mr. Chairman, I would be pleased to answer any questions that you or other members of the subcommittee may have.

16412 Keats Terrace
Rockville, MD 20855
October 20, 1981

Senator William S. Cohen, Chairman
Senate Select Committee on Indian Affairs
Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

This is to provide information to supplement testimony I gave before your Committee on September 28, 1981 on the matter of S. 874, the Steelhead Protection Bill. This information was requested by Senator Melcher and has since been discussed with me by members of the Committee staff.

I represent Trout Unlimited and the Northwest Steelhead and Salmon Council, an affliate of Trout Unlimited from the state of Washington. These groups are keenly interested in protecting and preserving wild steelhead trout and see in S. 874 one way to attain this end.

In preparing for the September hearing on this Bill, I set out to ascertain whether or not the commercial harvest of steelhead trout is having an impact on the well-being of wild steelhead stocks of the Boldt Case Area. This question has been at the core of the long-standing controversy about the issue, and is one about which there has been far too much misunderstanding.

I asked for and received the fullest possible cooperation from the Washington Department of Game. I was given raw data concerning the harvest of steelhead, both sport and commercial, for 15 rivers in the Boldt Case Area. These rivers represent the bulk of the steelhead harvest of the area. The data given me had been brought up to date as of mid-August, 1981 (that is to say, earlier errors had been corrected and the data re-checked), and included information on the commercial harvest of steelhead trout by Treaty Tribe fishermen. In the latter case when data provided to the State by the tribes differed from data the State had developed about Indian harvest, the Indian-generated figures were given to me. I am satisfied that these data represent the best and most objective information available.

Some comments about my analysis of the data are in order. First of all, mine has not been a sophisticated and deeply penetrating statistical analysis of the information. In my opinion that was not necessary in order to address the question of the impact of commercial harvest on wild trout populations. Further, while I recognize the problems associated with the lack of precision of information, especially that developed many years ago, I have made no attempt to compensate in any way for these factors. I have taken the data as they have been given to me and have attempted to draw some conclusions from them.

One of the fundamental points to be understood is that data showing only the harvest of steelhead are not especially useful in attempting to determine how well fish populations are doing. The harvest results are simply a measure of success and bear only a loose relationship to the well-being of the fish. It is only when one can assess the harvest as compared to total run size --and therefore has some idea of the spawning escapement-- that judgements can be made about the status of the fish populations, including the wild component. Information of this kind is vital to the successful management of an anadromous fishery resource, and is only now being generally developed by Indian fishery managers and the Washington Department of Game. The accumulation of this information is relatively complex, and is costly. (It is for this reason that all of us who are concerned with the steelhead fishery of the northwest should make sure that a lack of proper funding does not affect this important part of the overall fishery management program.)

Now, to turn to the data and my review of them. Graph No. 1 is a comparison of several kinds of information about winter-run steelhead trout. It displays the Indian harvest as reported since the 1950-51 season, the total harvest from the 15 rivers I examined in individual detail, and the sport take of winter-run steelhead from all rivers in the Boldt Case Area, as well as a grand total of harvest from all the rivers in the Case Area (Indian harvest + sport harvest).

Several things are revealed from this presentation of data:

- The data for the 15 rivers closely parallel the information from all the rivers in the Case Area, demonstrating that those rivers are representative of the situation throughout the Case Area.

- As with many biological situations, there is a danger in drawing generalities, since the detailed information almost always demonstrates departures from any "norm" that may be expressed as a generality. The fluctuations from year to year in each of the entries demonstrates this.

- There is uncertainty about data from Indian harvest records for many years, particularly from 1963 through 1970. This fact has been the subject of controversy in the past, but I feel these uncertainties can be discounted; it is the present state of the steelhead fishery about which we are concerned, not possible shortcomings in past information.

On a more specific note, I believe the following observations are important:

- While the grand total harvest has varied from year to year, it has remained essentially the same over the years. This indicates that some combination of wild and hatchery-reared steelhead has sustained a generally stable harvest for many years.

- In spite of this long-term stability, fishery managers cannot overlook the problem of unexplained seasonal declines in take. In 1969-70 there was a dramatic loss of fish at sea --they simply did not appear in the expected runs that year. Fish that do not run do not spawn; the consequences will appear in the next three or four years, when the lack of initial spawning will be reflected once more in diminished runs. This appears to be the case in 1972-73. These run losses reverberate through the future and must be compensated for through management schemes that propose a lessened take or a hatchery production that buffers that loss.

- The decline in harvest revealed in 1975-76 and in 1976-77 may be due in part to a run loss, but that is obscured by the fact that in the post-Boldt management of the fishery there were wide-spread sport angling restrictions designed to assure the availability of fish for Indian harvest.

- The Indian harvest record is of interest. In the pre-Boldt years the harvest was generally limited and stable, based upon the admittedly uncertain information available. The harvest increased dramatically upon the handing down of the Federal Court decision, and then began a decline. This decline, in my view, does not represent the overharvest of fish, as many claim, but is, in fact, a reflection of the improved management undertaken by the Indian community and the State. By the 1979-80 season the sport and Indian harvest is clearly in consonance and is within 10,000 fish of being at the 50-50 split required by the Federal Court.

Graph No. 2 is a composite of the total harvests (Indian and sport), as well as the steelhead smolt plants from hatcheries, for the 15 rivers I reviewed. These data show the run loss sustained in 1969-70, as well as the sharp increase in Indian harvest immediately following the Boldt decision in 1974. Also of interest is the clear indication that State and Indian fishery managers began to get a grip on the situation, with the result that the harvest reached near equity in 1979-80.

The introduction of hatchery-reared smolts has showed a steady increase over the years. This increased attention to hatchery production has, in my view, sustained a stable harvest of steelhead trout, particularly in the turbulent times after the Boldt decision. Without the addition of the hatchery production it is likely that overall harvest would have declined sharply and that wild steelhead might be in very serious straits at this time.

A word about hatchery production and its role in the management of anadromous fish is in order here. While hatchery production has been important to the steelhead fishery over the years, it cannot be considered a cure-all or a ready answer to the problem of declining anadromous fish runs. Hatchery production cannot offset the effects of habitat deterioration or destruction; hatchery production is an increasingly expensive effort, particularly when one considers that at best only about 5% of hatchery production returns as adult members of the fish runs. Hatchery fish do not duplicate wild fish; for the most part they lack the genetic characteristics that have enabled wild fish to survive and thrive through the millenia. At best hatchery fish can be selectively bred to resemble closely the characteristics of the wild strains inhabiting the rivers into which the hatchery fish are to be introduced; at worst they can be fish whose characteristics conflict with wild fish and may be damaging to the wild populations.

Finally, there is evidence that the introduction of hatchery-reared fish has a built-in point of diminishing return: research has indicated that when large numbers of fish are introduced, the increasing numbers do not produce larger adult runs --there is a threshold above which the addition of more fish will produce no increased returns.

The continuation and improvement of steelhead fisheries in the northwest must depend upon wild fish. These naturally adapted populations must be managed to provide for enhancement of their populations, not just the maintenance of a status quo. Fish hatchery production clearly has a place in steelhead management, but must be approached with care and informed planning.

With this background, it is useful to look at Tables 1 through 4. These are data for four major steelhead rivers, the Humptulips, the Green, the Quillayute, and the Skagit. These are rivers which the Washington Department of Game has studied intensively in order to gather some basic information: the Indian catch, the sport take, the escapement (and by adding these, determining the total run size), and most important of all, a determination of the size of the wild fish component and the hatchery fish contribution to the whole. While I risk over-simplification of what is really a complex process, it is fair to say that this information is fundamental to the proper management of the fishery. The managers must know the harvest, the escapement, and the part hatchery fish and wild stocks have played in the whole. Given this information, managers can regulate the harvest to achieve the escapement desired, and at the same time manipulate the harvest to make the most of opportunities for wild stocks to increase and be improved.

This precision of management is accomplished by timing hatchery releases so that the resultant adult fish will return as "runs" at times other that when wild runs occur. This will assure that fishing --whether commercial or sport-- will be directed toward hatchery fish, and so that wild runs will not be mixed with hatchery-reared fish, thus exposing wild steelhead to unwarranted or undesireable harvest. Such management requires the marking of hatchery fish for ready identification, and sophisticated monitoring of the harvest as it goes on. All of this is relatively costly and requires skilled personnel to do the work, but is vital to the effective management of the steelhead resource.

By examining the tables provided, it is evident that the four rivers demonstrate an escapement that is largely wild steelhead. Indian and sport harvests are made up primarily of hatchery-reared fish. This is what fishery managers seek. The only shadow cast across an otherwise sunny scene is with respect to total numbers --they are low. In the mid-1950's the sport take alone for the Humptulips river was reported as being more than 10,000 fish; the sport take in the Green at that time reached a peak of more than 15,000 fish. These were the years before hatchery production had the impact it has now, so the fish being taken were probably largely wild steelhead. In short, the management of the fishery has improved markedly, but the managers are dealing with decreased numbers of fish, and sharply reduced numbers of wild steelhead trout. These decreases can almost certainly be attributed to habitat problems.

Professional biologists of the Department of Game have told me that the situation outlined in Tables 1 through 4 is also typical of the other major rivers of the area, though they have not been so carefully and thoroughly studied. This implies that management is generally effective insofar as regulation, use of hatchery fish, and harvest emphasis are concerned for all of the rivers of the area.

A review of the graphs for the 15 rivers I reviewed (Graphs 3 through 17) reveals a general similarity among rivers in terms of harvest (with some notable exceptions). The data for individual river systems also tend to accentuate those factors which underlie the interpretation of biological data and which add to the difficulty of that interpretation.

Factors like a river's tendency to change abruptly, perhaps being subject to flash flooding with resultant turbidity that discourages sport fishing (but does not affect net fishing), can result in an indication of harvest decline. This can be misinterpreted to be a problem with the fishery, when in fact it reflects only a situation in which the stream becomes "unfishable." The Elwha River, Graph No. 3, is such a case.) The Green River is near Seattle and it is probable that events like a gasoline shortage may force sport anglers to that nearby stream rather than to a favored but more distant fishing site --with a resultant change in the expected harvest for both streams. (Again, one must bear in mind that harvest alone is not a good indicator of the status of the fishery.)

Some points warranting special attention should be explained:

- Graph No. 4; Green River. Note the 1969-70 run loss that is evident in almost all the graphs. The sharp decline in sport harvest for 1974-75 and 1975-76 reflects a general restriction by regulation, not necessarily a problem with fish populations.

- Graph No. 5; Hoh River. Note how the harvest for Indians and anglers begins to come together at a mid-point as management regimes have had their effect.

- Graph No. 8; Nisqually River. Indian harvest has been high since before the Boldt decision because of the advantageous location of the Nisqually Tribe's fishing sites; note, however, that management has brought both sport and Indian harvest into a similar range since the Boldt decision in 1974.

- Graph No. 9; Nooksack River. Again, an advantageous location of Tribal fishing sites has assured a preponderance of Indian harvest. These locational advantages require careful management to prevent the very efficient net fisheries from overfishing wild stocks, particularly those adults that have spawned and are returning to the sea once again.

- Graph No. 11; Queets River. Sport take on this river has never been great, possibly the result both of location of the Tribal sites and the rapid and unpredictable changes in river flows that may make rod and reel fishing difficult.

- Graph No. 13; Quinault River. This river lies largely within the Tribal reservation; sport harves has never been high. In addition, regulations within the Olympic National Park affect the harvest picture.

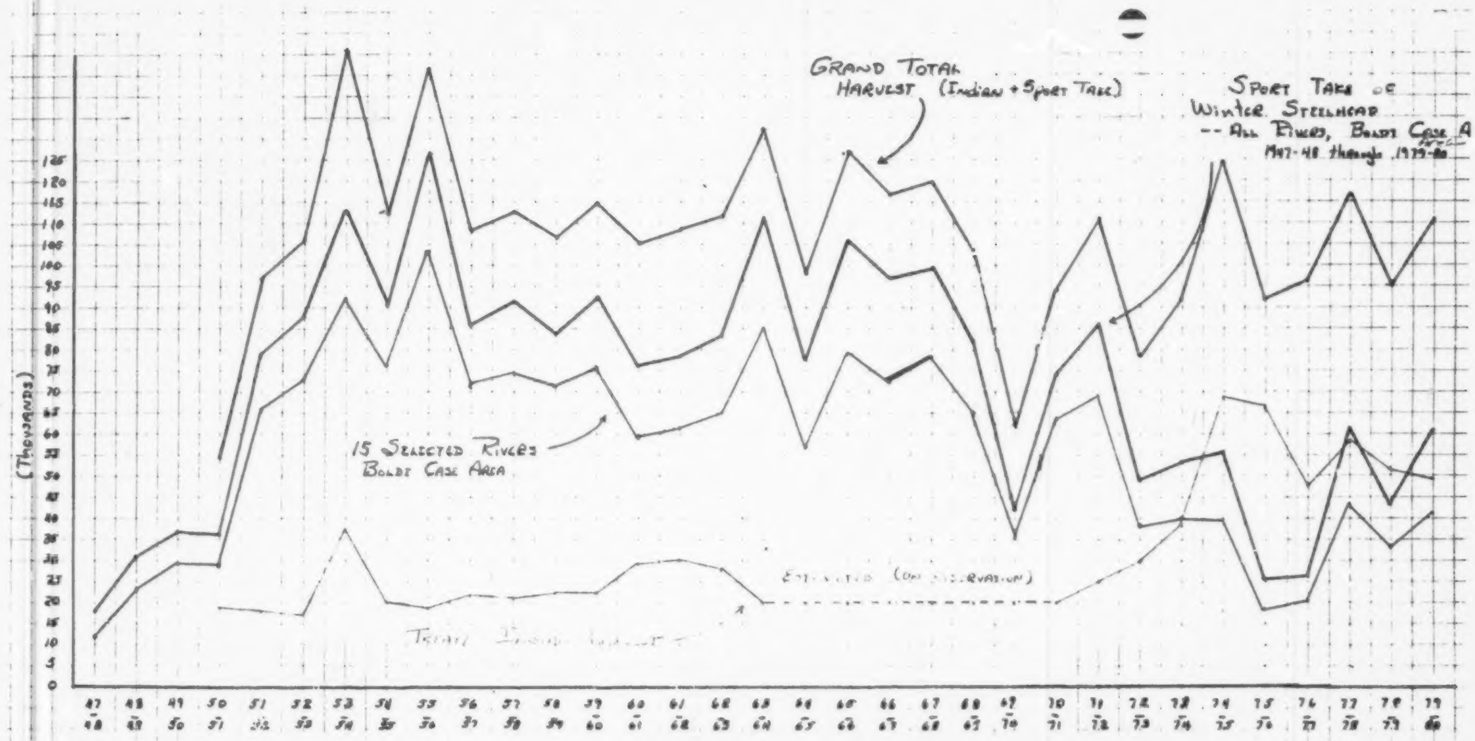
On the basis of all these data, it is my opinion that the steelhead trout are being well-managed, given the paucity of funds and personnel for the purpose. Further, it is my belief that with rare and perhaps periodic exceptions, the commercial fishery program has not had a deleterious biological effect upon the wild steelhead trout populations involved. The most serious problem confronting the steelhead --and other anadromous fishes of the area-- is one of habitat loss and deterioration.

In addition, there is the conflict that has persisted over the years between commercial fishermen and sport anglers. This conflict has been an obstruction to the effective resolution of problems that do affect the fish. The conflict is a social one, the cost of which can easily become a continued diversion of energy away from the problems that confront steelhead and toward an emotion-fueled and counterproductive friction that has little or no biological basis.

Sincerely,

Lynn A. Greenwalt

Lynn A. Greenwalt



GRAPH No. 1 SPORT TAKE, ACTUAL CATCH; ALL RIVERS in BOLDT CASE AREA
Winter Steelhead
1947-48 through 1979-80

Sept. 18
1984

River	Year	Origin of Steelhead	Indian Catch No.	Indian Catch (% H/W)	Sport Catch No.	Sport Catch (% H/W)	Escapement No.	Escapement (% H/W)	Totals	(%)	% of Totals Ind.	% of Totals Spt.	% of Totals Escp.	Exploitation % Ind.	Exploitation % Spt.	Exploitation % Ttl.
HUMPTULIPS	1978-79	Htchy	183	53%	1656	91%	843	20%	2682	42%	7	62	31	7	66	65
		Wild	162	47%	160	9%	3371	80%	3693	58%	4	4	91	4	5	9
		Total	345		1816		4214		6375		5	28	66	5	30	34
	1979-80	Htchy	1849	84%	2644	84%	179	6%	4672	56%	40	57	4	40	94	96
		Wild	345	16%	518	16%	2857	94%	3720	44%	9	14	77	9	15	23
		Total	2194		3162		3036		8392		26	38	36	26	51	64
	1980-81	Htchy	1862	85%	1551	79%	-------- These data not available at this time --------									
		Wild	317	15%	417	21%										
		Total	2179		1968											

Table 1.

Total run sizes and exploitation rates for the Humptulips River, expressed in hatchery or wild composition.

WINTER STEELHEAD

Data provided by Washington Department of Game. September, 1981

River	Year	Origin of Steelhead	Indian Catch		Sport Catch		Escapement		Totals		% of Totals			Exploitation %		
			No.	(% H/W)	No.	(% H/W)	No.	(% H/W)	Totals	(%)	Ind.	Spt.	Escp.	Ind.	Spt.	Ttl.
GREEN	1977-78	Htchy	3101	71%	4316	88%	754	41%	8264	74%	38	52	9	38	84	90
		Wild	1239	29%	587	12%	1077	59%	2913	26%	43	20	37	43	35	63
		Total	4340		4903		1831		11167		39	44	16	39	72	83
	1978-79	Htchy	3907	87%	4866	94%	341	20%	9114	80%	43	53	4	43	93	96
		Wild	594	13%	338	6%	1385	80%	2317	20%	26	15	60	26	20	40
		Total	4501		5204		1726		11431		39	46	15	39	75	85
	1979-80	Htchy	3581	80%	6090	93%	241	13%	9912	77%	36	61	2	36	96	98
		Wild	903	20%	482	7%	1586	87%	2971	23%	30	16	53	30	23	47
		Total	4484		6572		1827		12833		35	51	14	35	78	86
	1980-81	Htchy	4182	96%	4777	89%	430	28%	9389	84%	45	51	5	45	92	95
		Wild	156	4%	609	11%	1083	72%	1848	16%	8	33	59	8	36	41
		Total	4338		5386		1513		11237		39	48	13	39	78	87

Table 2.

Total run sizes, exploitation rates for the Green River, expressed in hatchery or wild composition.

WINTER STEELHEAD

Data provided by Washington Department of Game. September, 1981

River	Year	Origin of Steelhead	Indian Catch No.	Indian Catch (% H/W)	Sport Catch No.	Sport Catch (% H/W)	Escapement No.	Escapement (% H/W)	Totals	(%)	% of Totals Ind.	% of Totals Spt.	% of Totals Escp.	Exploitation % Ind.	Exploitation % Spt.	Exploitation % Ttl.
QUILLAYUTE	1977-78	Htchy	8106	85%	4265	84%	2063	25%	15681	65%	52	27	13	52	56	79
		Wild	1431	15%	835	16%	6189	75%	8455	35%	17	10	27	17	12	27
	Total		9537		5100		8252		24136		40	21	34	40	35	61
	1978-79	Htchy	5491	68%	1247	81%	429	9%	8174	53%	67	15	5	67	46	82
		Wild	2601	32%	295	19%	4340	91%	7236	47%	36	4	60	36	6	40
	Total		8092		1542		4769		15410		53	10	31	53	21	63
	1979-80	Htchy	4889	83%	3548	75%	586	11%	10890	61%	45	33	5	45	59	77
		Wild	975	17%	1183	25%	4707	89%	6865	39%	14	17	69	14	20	31
	Total		5864		4731		5293		17755		33	27	30	33	40	60
	1980-81	Htchy	5636	81%	3509	68%	1854	21%	13204	57%	43	27	14	43	46	69
		Wild	1345	19%	1630	32%	6799	79%	9774	43%	14	17	70	14	19	30
	Total		6981		5139		8653		22978		30	22	38	30	32	53

Table 3.

Total run sizes, exploitation rates for the Quillayute River, expressed in hatchery or wild composition. (Note: trap count data omitted; percentages may not add up for that reason.)

WINTER STEELHEAD

Data provided by Washington Department of Game. September, 1981

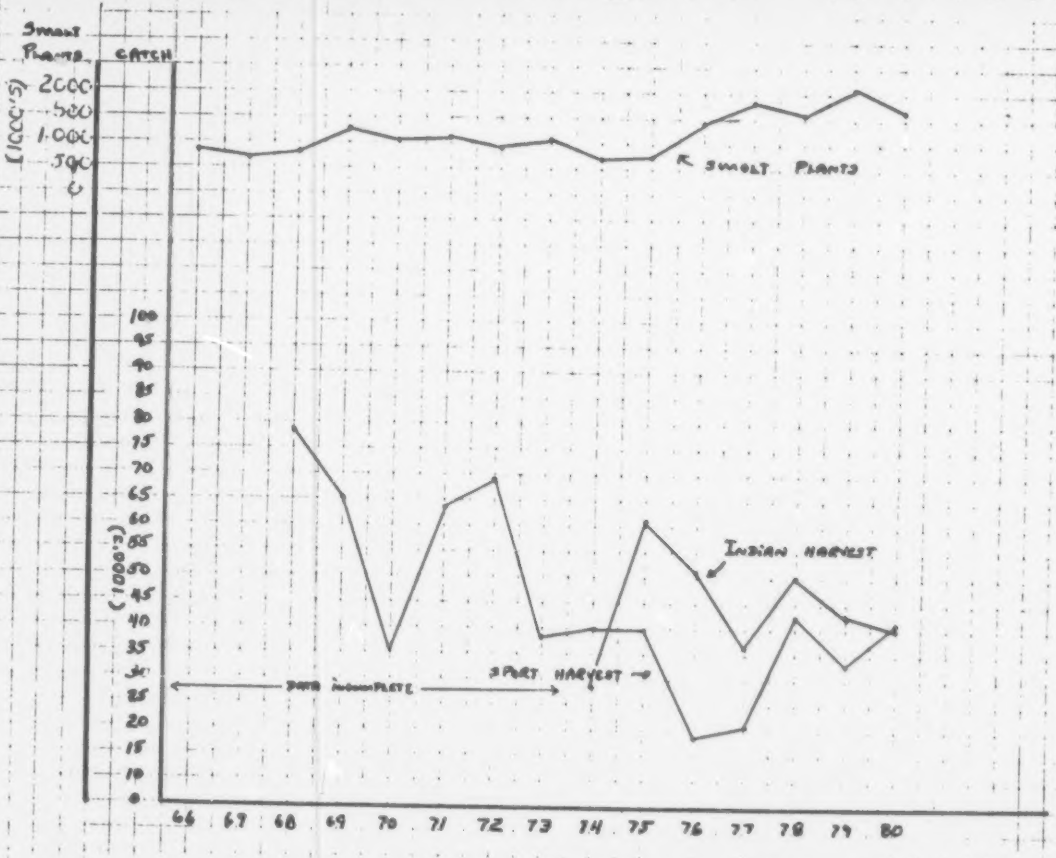
River	Year	Origin of Steelhead	Indian Catch No.	Indian Catch (% H/W)	Sport Catch No.	Sport Catch (% H/W)	Escapement No.	Escapement (% H/W)	Totals	(%)	% of Totals Ind.	% of Totals Spt.	% of Totals Escp.	Exploitation % Ind.	Exploitation % Spt.	Exploitation % Ttl.
SKAGIT	1977-78	Htchy	3532	83%	2375	90%	1537	21%	7444	52%	47	32	21	47	61	79
		Wild	718	17%	268	10%	5757	79%	6743	48%	11	4	85	11	4	15
	Total		4250		2643		7294		14187		30	19	51	30	27	49
	1978-79	Htchy	3873	79%	4032	95%	961	24%	8866	65%	44	45	11	44	81	89
		Wild	1013	21%	211	5%	2982	76%	4206	35%	24	5	71	24	7	29
	Total		4886		4243		3943		13072		37	32	30	37	52	70
	1979-80	Htchy	3990	95%	2498	74%	721	12%	7209	53%	55	35	10	55	45	90
		Wild	209	5%	864	26%	5288	88%	6361	47%	3	14	83	3	14	17
	Total		4199		3362		6009		13570		31	25	44	31	36	56
	1980-81	Htchy	2363	80%	1340	53%	1127	21%	4830	44%	49	28	23	49	54	77
		Wild	586	20%	1193	47%	4308	79%	6087	56%	10	20	71	10	22	29
	Total		2949		2533		5435		10917		27	23	50	27	32	50

Table 4.

Total run sizes and exploitation rates for the Skagit River, expressed in hatchery or wild compostion.

WINTER STEELHEAD

Data provided by Washington Department of Game. September, 1981



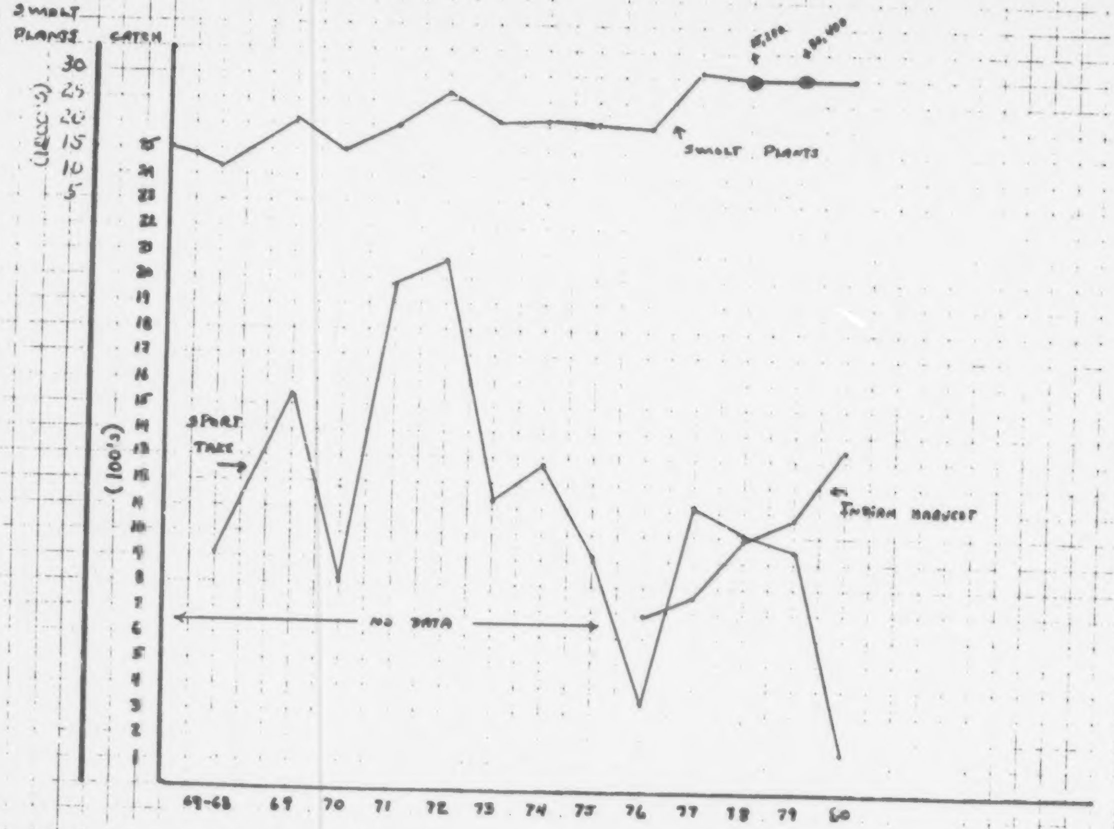
Graph No. 2

Composite (Totals)

Winter Steelhead Data

(15 Rivers)

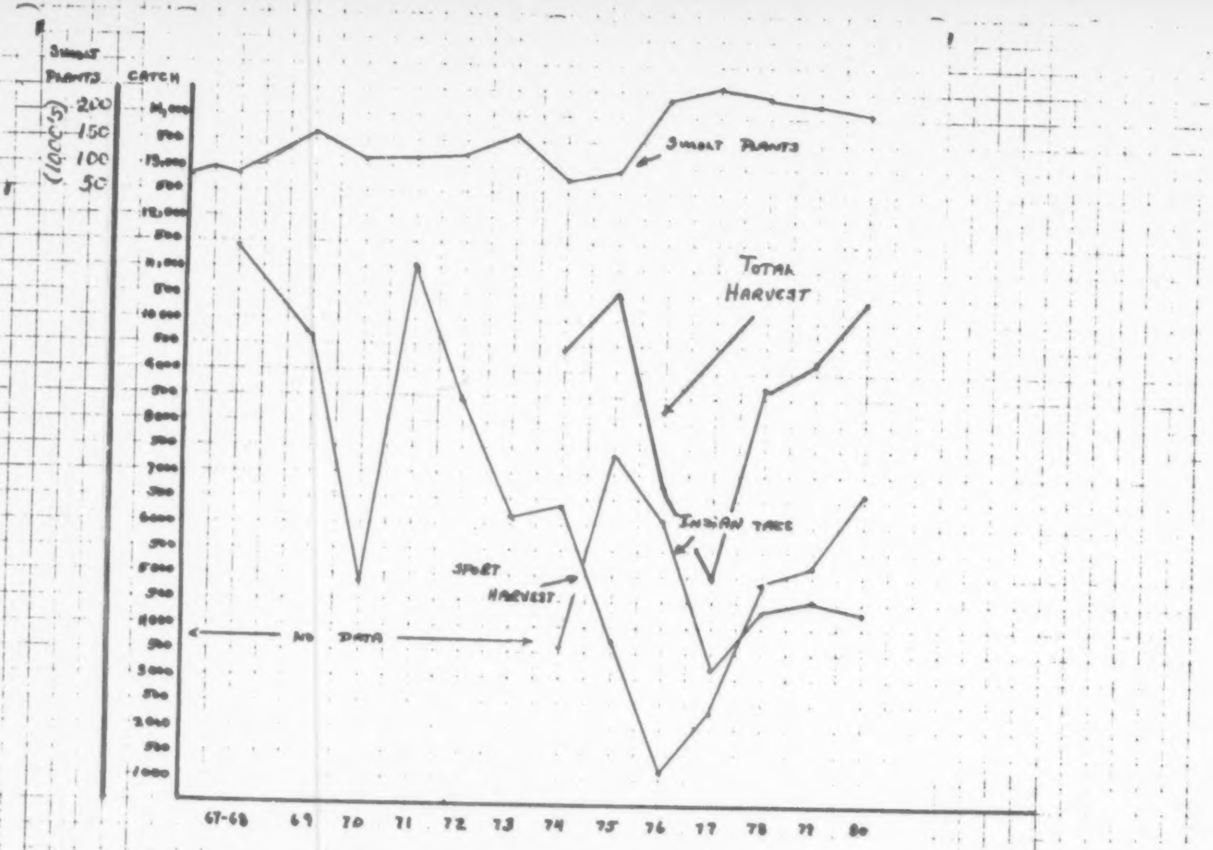
Sept. 81



ELWHA RIVER

GRAPH No. 3 Winter Steelhead Data

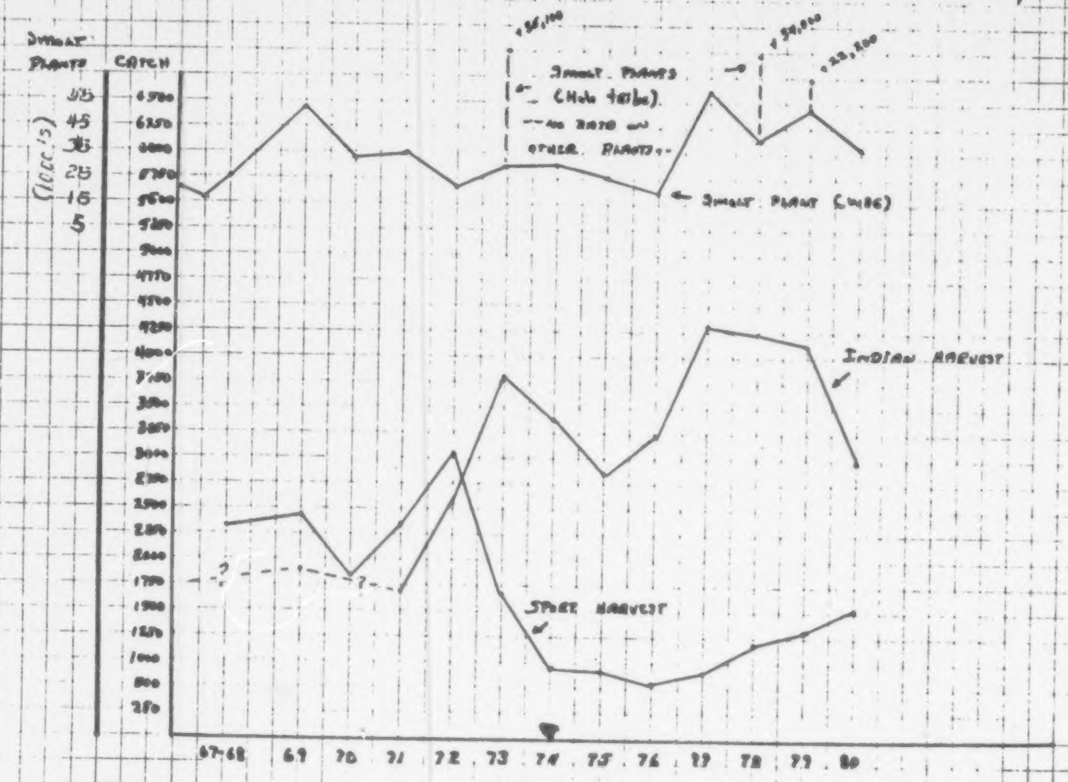
Sept. 81



GREEN RIVER

GRAPH No. 4 Winter Steelhead Data

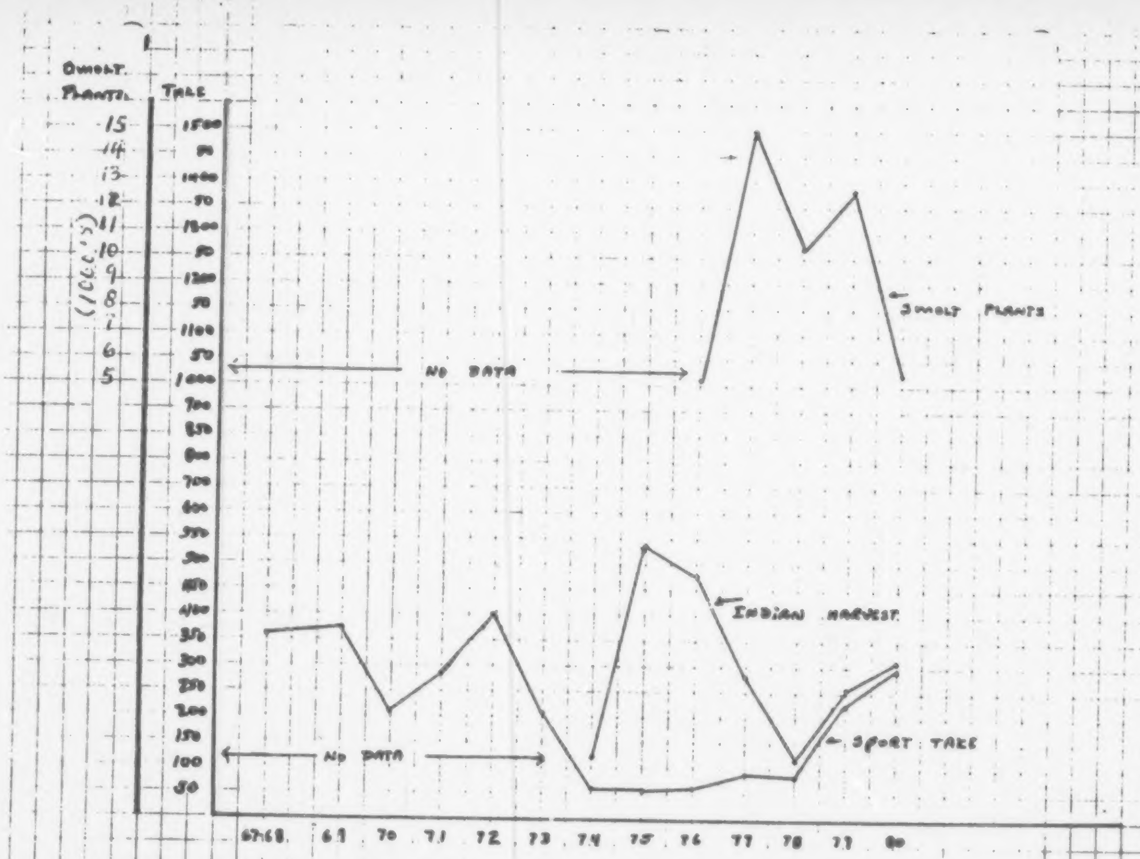
Sept. 81



Hoh River

Graph No. 5 Winter Steelhead Data

Sept. 81

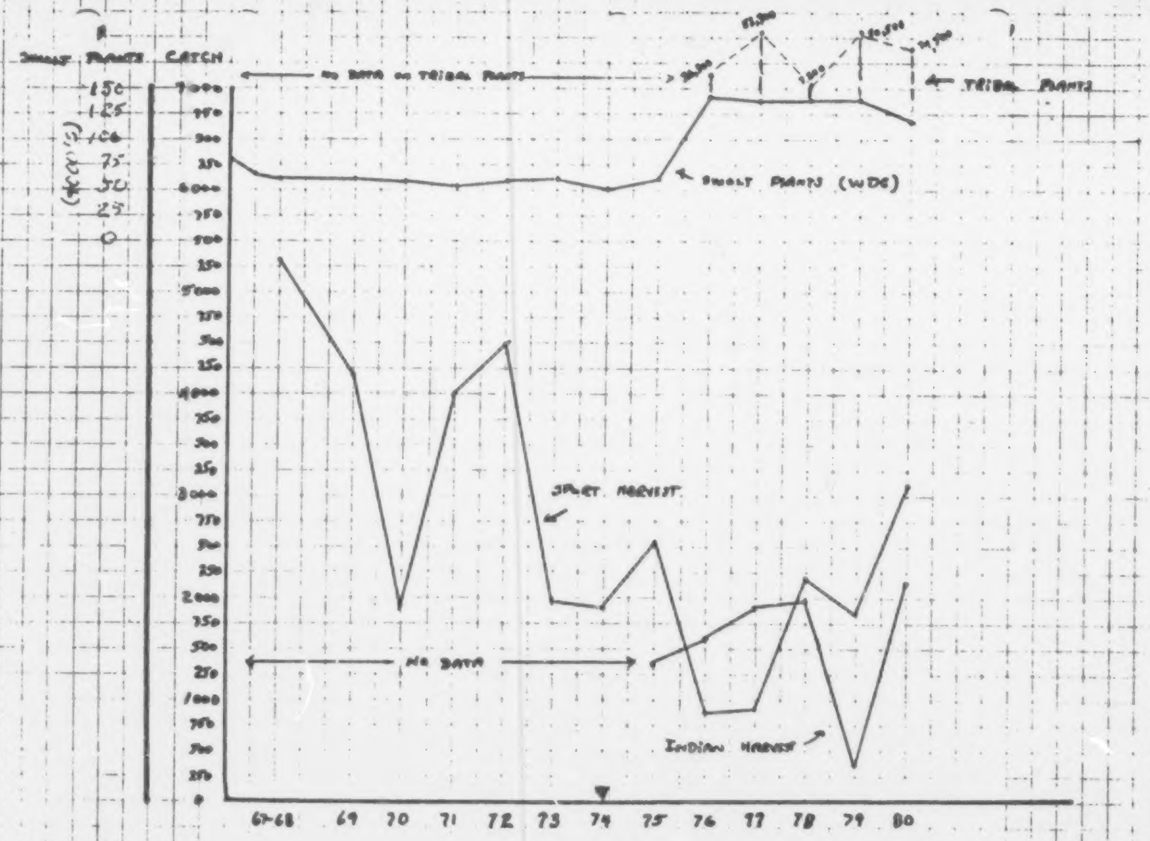


GRAPH No. 6

HOKO RIVER

WINTER STEELHEAD DATA

Sept. 81

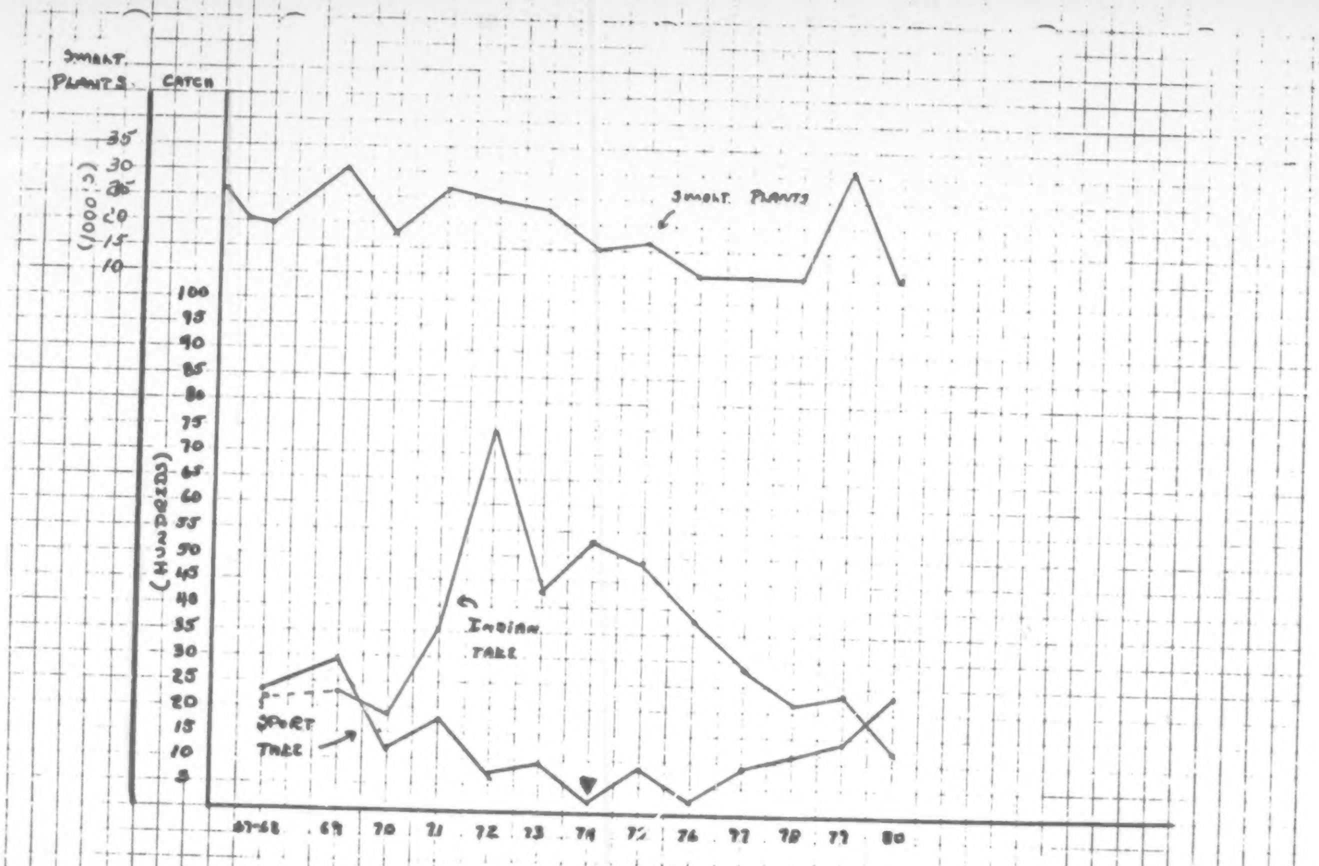


Humptulips River

Graph No. 7

Winter Steelhead Data

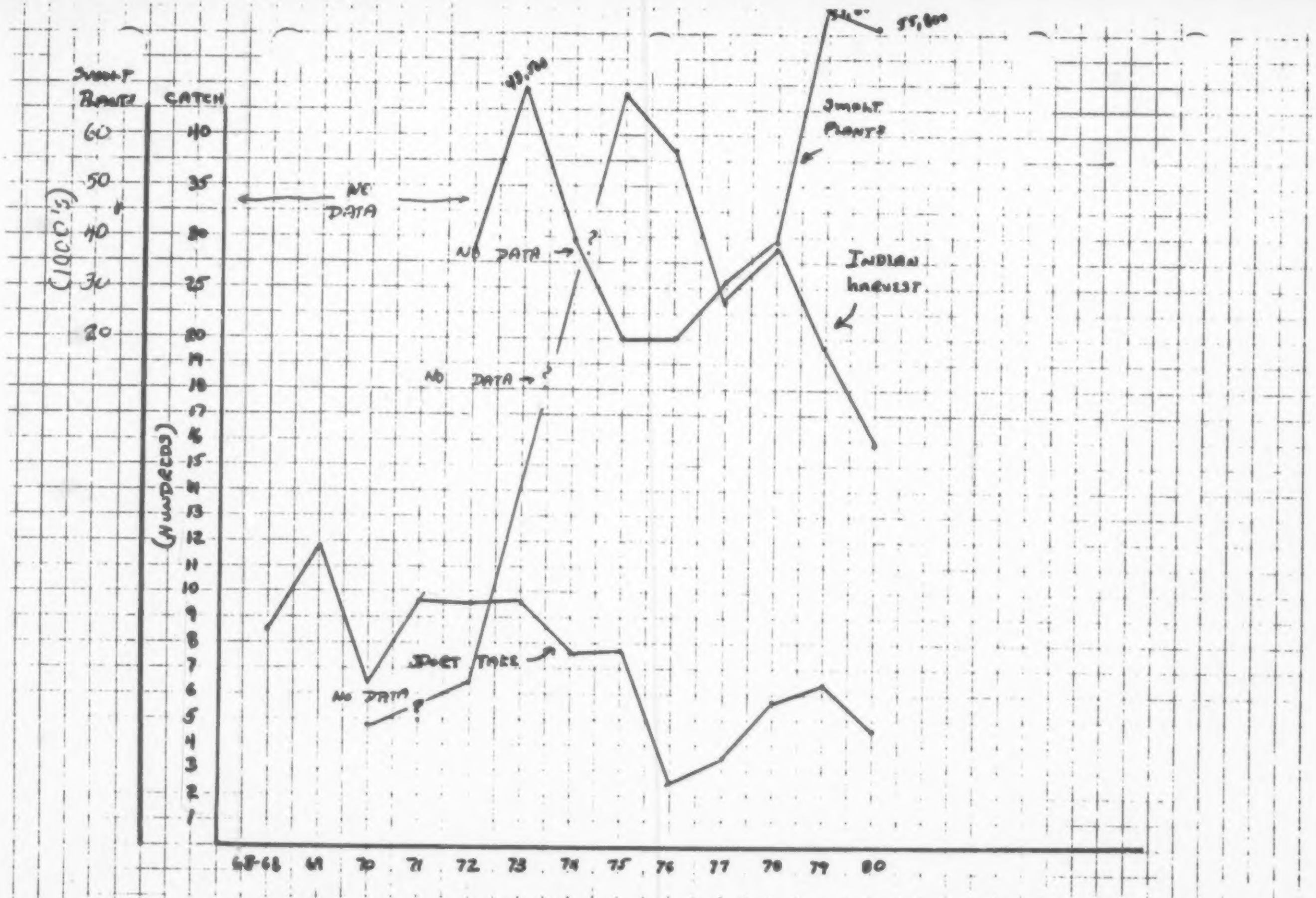
Sept. 81



GRAPH No. 8 NISQUALLY RIVER

WINTER STEELHEAD DATA

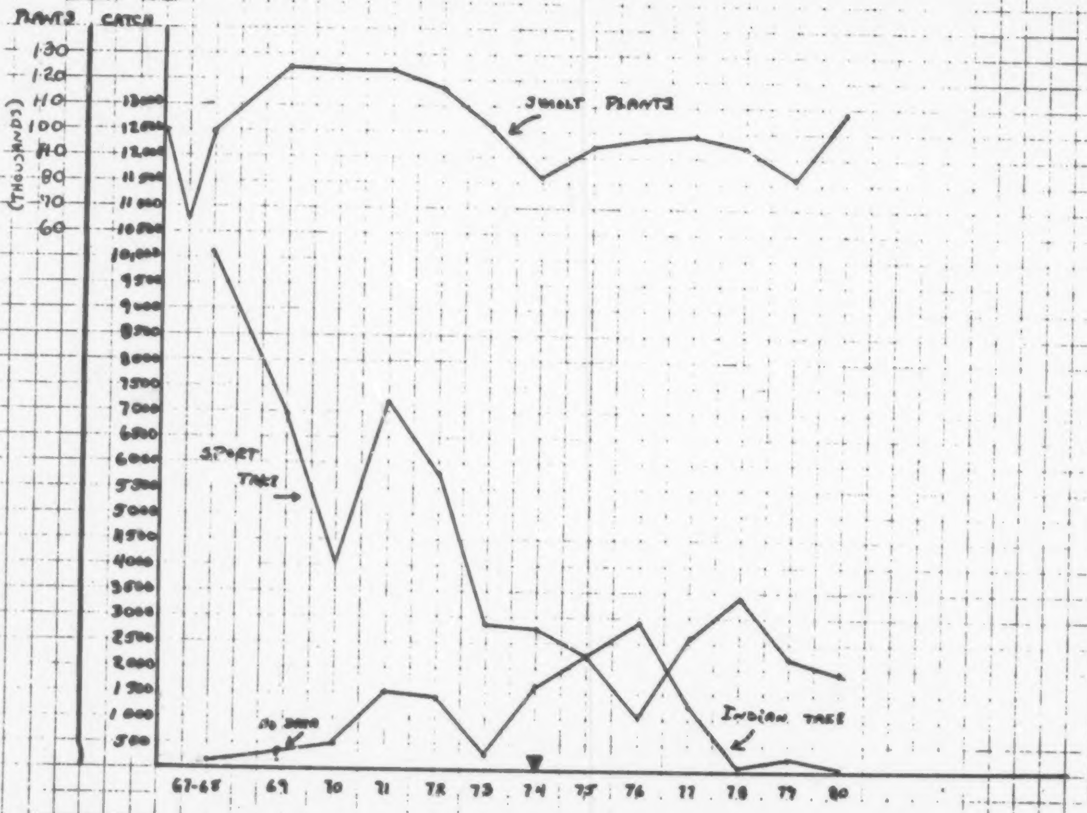
Sip. 81



GRAPH No. 9 NOOKSACK RIVER

WINTER STEELHEAD DATA

SEPT. 81

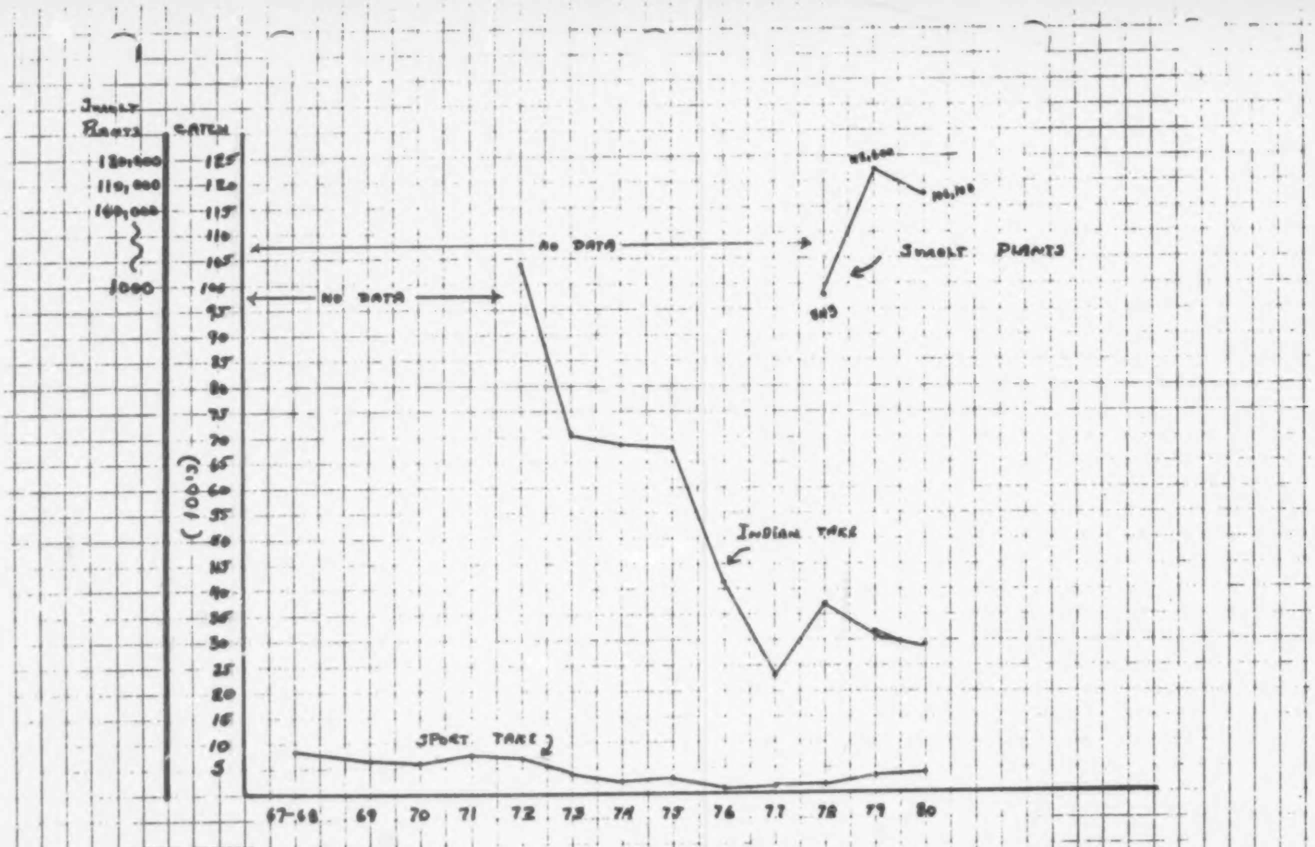


GRAPH No. 10

PUYALLUP SYSTEM

Winter STEELHEAD DATA

SEPT. 81

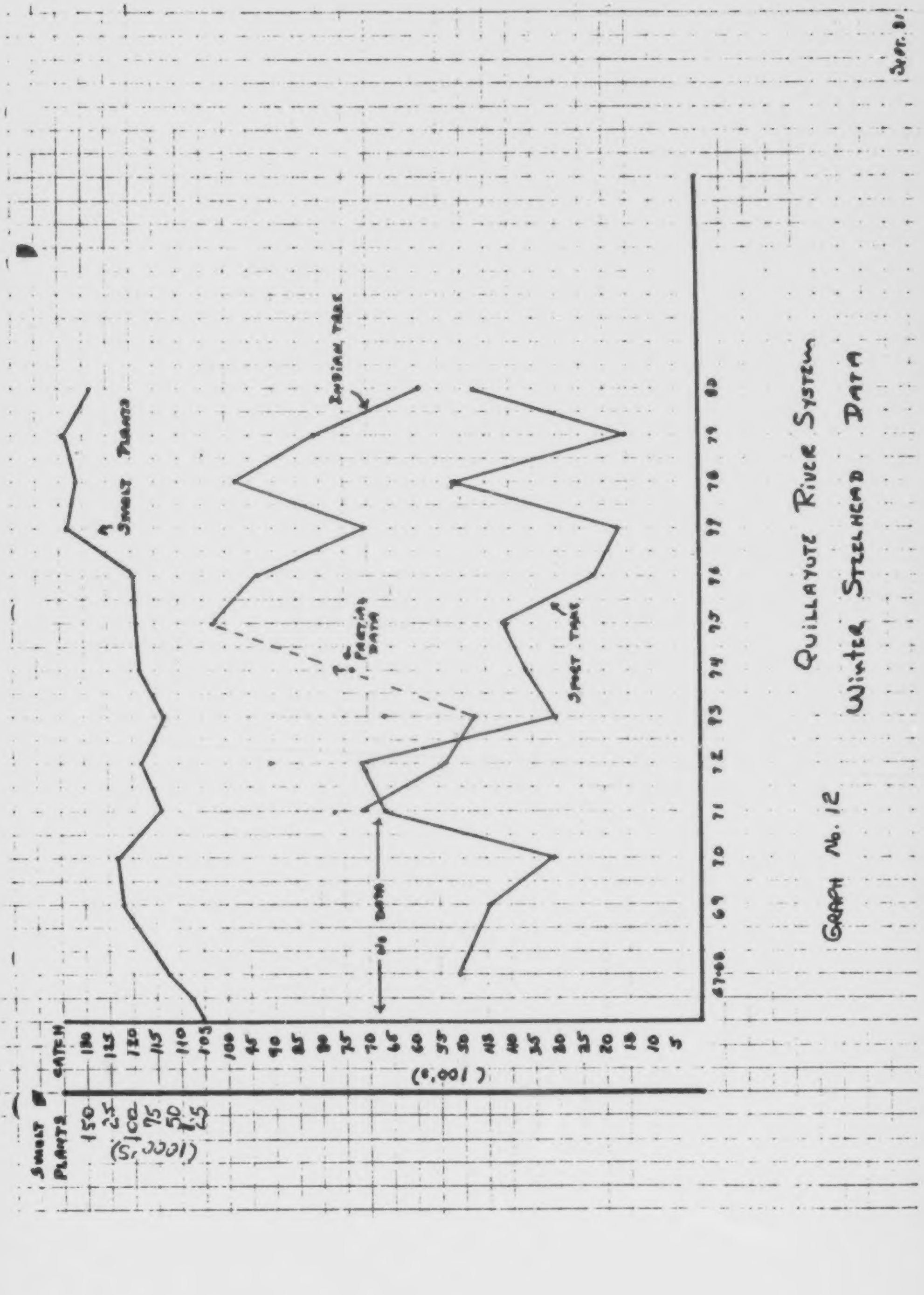


Queets River System

Winter Steelhead Data

Graph No. 11

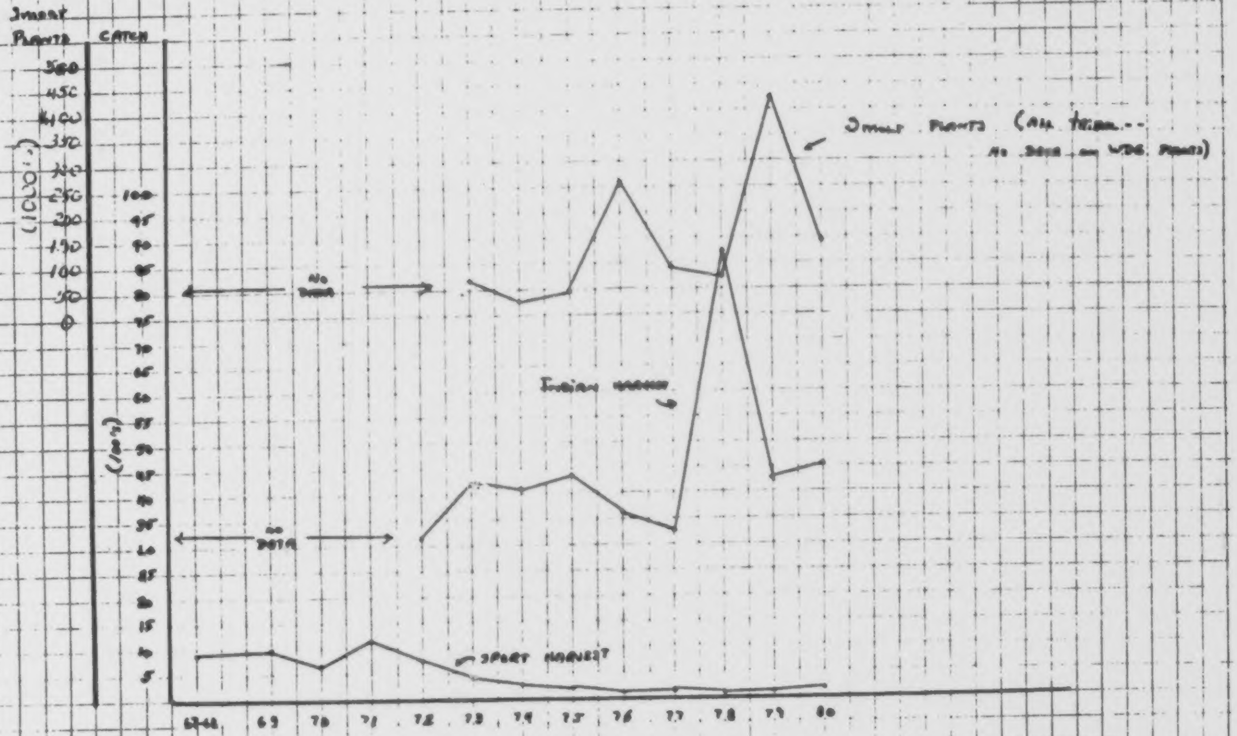
Sept. 81



Graph No. 12

Quillayute River System

Winter Steelhead Data

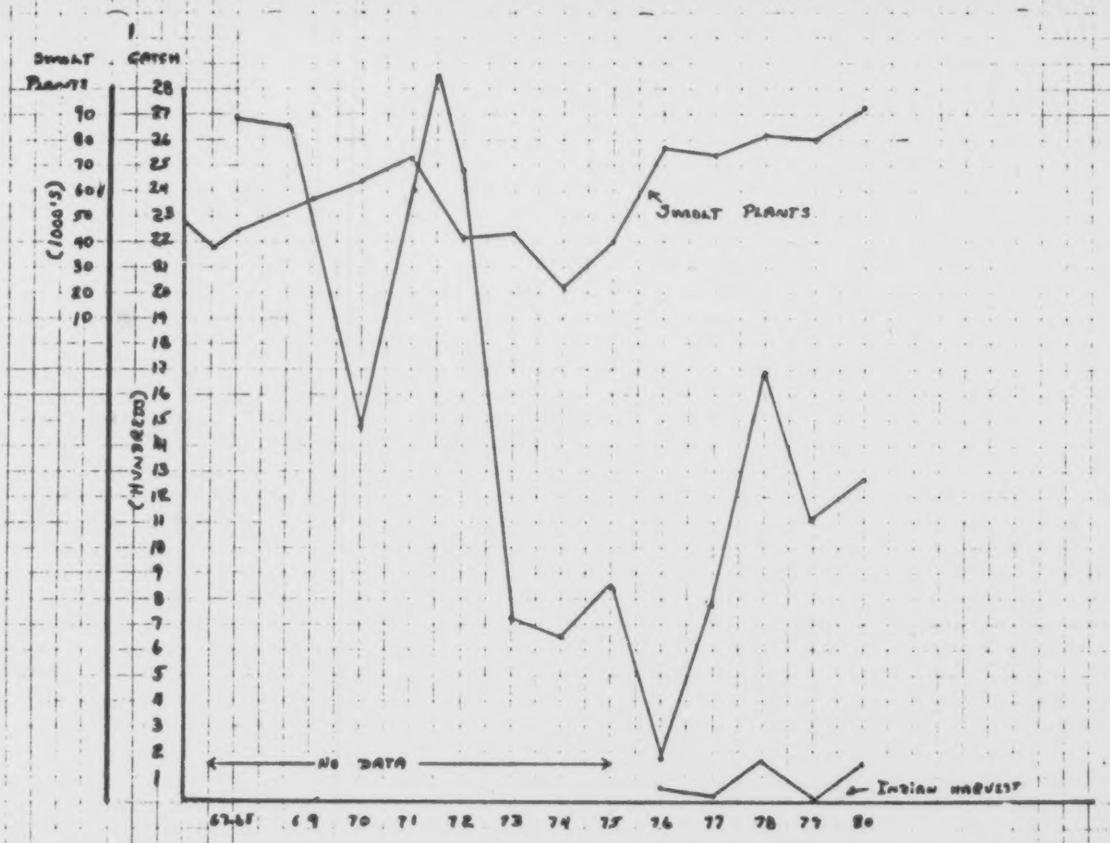


GRAPH No. 13

QUINAULT RIVER

WINTER STEELHEAD DATA

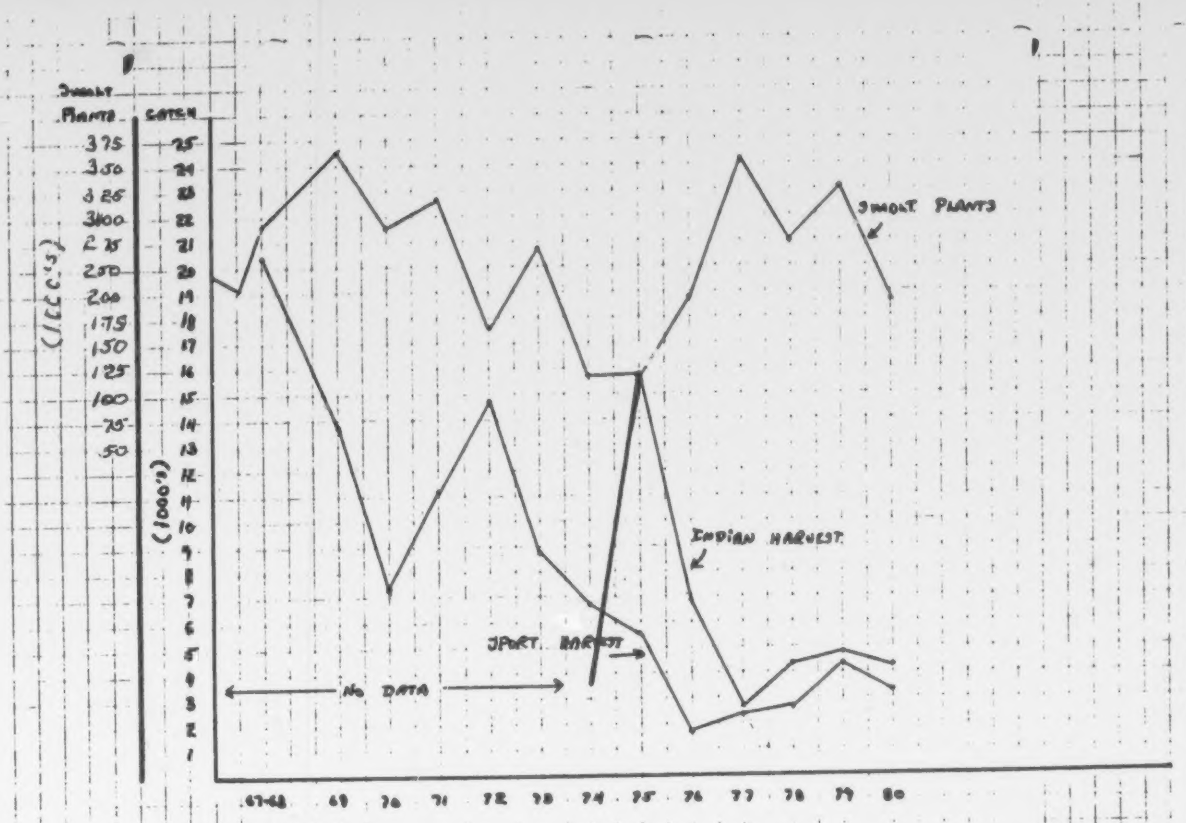
SEPT. 81



GRAPH. No. 14

JAMISH RIVER
Winter STEELHEAD DATA

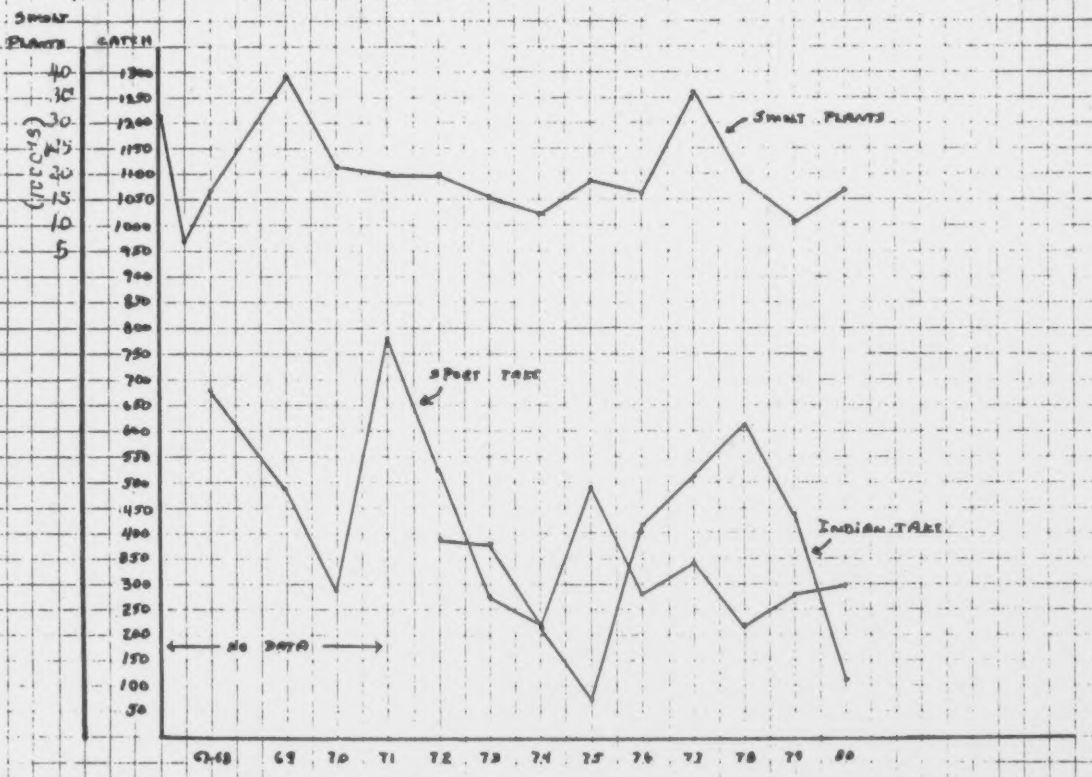
SEPT. 81



GRAPH No. 15

SKAGIT SYSTEM
Winter Steelhead Data

SEPT. 81

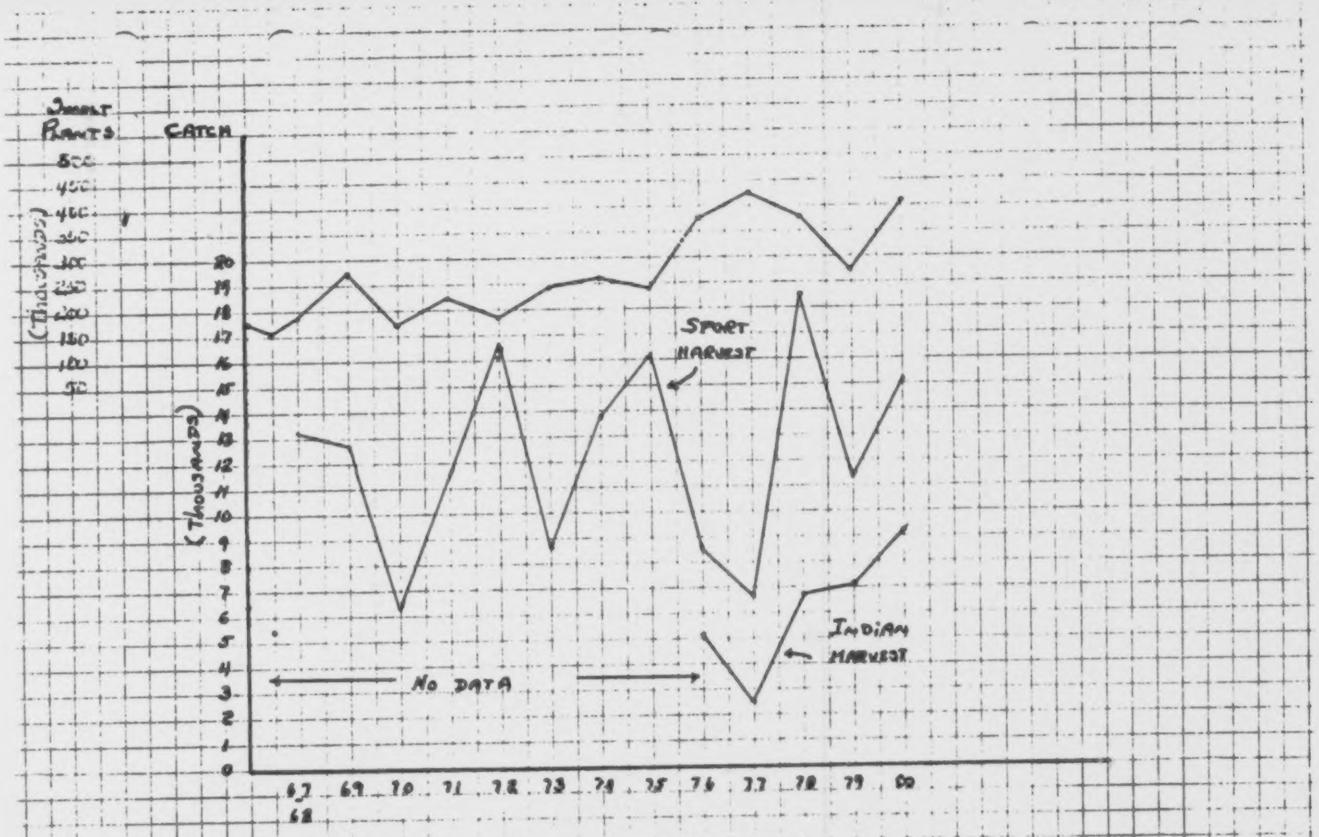


GRAPH No. 26

SKOKOMISH RIVER

WINTER STEELHEAD DATA

Sept. 81



Snohomish System

Graph No. 17

Winter-Run Steelhead Data

Sept. 1981

Senator **Melcher**. Mr. Chairman, I have a request. I understand Gary Morishima, assistant director of Quinault's natural resources division made an excellent presentation to the staff.

I wonder if we could have that presentation given to us in data form and supplied to the committee.

Senator **Gorton**. I understand he is prepared to give it at our request. We will do so.

Senator **Melcher**. Thank you.

Senator **Gorton**. Without objection, that material will be inserted in the record at this point.

[Subsequent to the hearing the following information was received for the record. Testimony resumes on p. 322.]

Quinault Indian Nation
POST OFFICE BOX 189 ☐ TAHOLAH, WASHINGTON 98587 ☐ TELEPHONE (206) 276-8211

November 3, 1981
REC'D NOV 12 1981

Mr. John Chaves
Senate Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear John,

Enclosed per your request is a copy of the graphics I used during the briefing of the Senate Select Committee Staff on September 24, 1981. A short explanation is included on each of the graphics, but it is of course not possible to convey all the information presented at the briefing through this kind of medium.

Please contact me directly should you require additional information.

Regards,

Gary S. Morishima

THE RESOURCE

A NUMBERS GAME

A Briefing on S874
Presented by Gary S. Morishima
September 1981

Discussion: The confusion caused by the proliferation of countless rumors, allegations, misrepresentations and outright falsehoods by sportsfishing interests seeking to decommercialize steelhead has obscured the real facts and issues involved in S874. Highly selective and misleading statistics have been so commonly employed to support arguments for decommercialization that I have entitled my briefing "The Resource: A Numbers Game."

MYTHS ABOUT STEELHEAD AND INDIAN FISHING

1. THE "BOLDT DECISION" GAVE INDIANS THE RIGHT TO SELL STEELHEAD.
2. INDIANS SHOULD BE TREATED JUST LIKE ANYONE ELSE - ON AN "EQUAL OPPORTUNITY" BASIS UNDER STATE REGULATIONS.
3. INDIAN FISHING FOR STEELHEAD MUST BE ELIMINATED FOR "CONSERVATION" OF THE RESOURCE.
4. INDIAN NET FISHING IS DESTROYING THE RESOURCE.
5. INDIAN NET FISHERIES ARE UNCONTROLLED: INDIANS ARE CATCHING AN "UNFAIR" SHARE OF THE STEELHEAD.
6. STEELHEAD SPORTS FISHERMEN PAY ALL THE COSTS OF STEELHEAD MANAGEMENT AND ENHANCEMENT.
7. STEELHEAD ARE MORE VALUABLE FOR RECREATIONAL THAN COMMERCIAL PURPOSES.
8. STEELHEAD SHOULD BE DECOMMERCIALIZED BECAUSE THE COSTS OF MANAGEMENT EXCEED ITS VALUE TO INDIANS.
9. STEELHEAD COMPRISES ONLY ONE PERCENT OF THE INDIAN CATCH, DECOMMERCIALIZATION WON'T HURT THEM.
10. THE PROBLEMS OF STEELHEAD MANAGEMENT CAN EASILY BE SOLVED BY PRODUCING MORE STEELHEAD IN HATCHERIES.
11. ONCE INDIAN FISHING ON STEELHEAD IS STOPPED, ALL THE PROBLEMS OF ANGLERS WILL BE SOLVED.
12. THE LEGISLATION SPONSORED BY SENATOR GORTON AND CONGRESSMAN BONKER IS NOT AN ABROGATION OF INDIAN TREATY RIGHTS.
    - A. DECOMMERCIALIZATION WON'T INTERFERE WITH THE ABILITY OF INDIANS TO EARN A "MODERATE LIVELIHOOD."
    - B. THE RIGHT TO LICENSE STEELHEAD SPORTSFISHERMEN ON-RESERVATIONS WILL BE MORE VALUABLE TO INDIANS THAN THE INCOME THEY COULD RECEIVE FROM SELLING STEELHEAD.

Discussion: Over the past several decades, so many myths have been consistently perpetuated by sportsmen's media blitzes and officials of the sportsman-controlled Washington Department of Game that it is difficult for anyone who is nor intimately familiar with the subject to understand the Steelhead Decommercialization Issue. Many of the more persistent myths are critically examined in a report entitled: "FACTS AND FALLACIES ABOUT STEELHEAD DECOMMERCIALIZATION" by Gary S. Morishima and Susan K. Hvalsoe (Hereinafter cited as F&F). A copy of this report has been provided to the Senate Select Committee on Indian Affairs Staff.

"CONSERVATION"

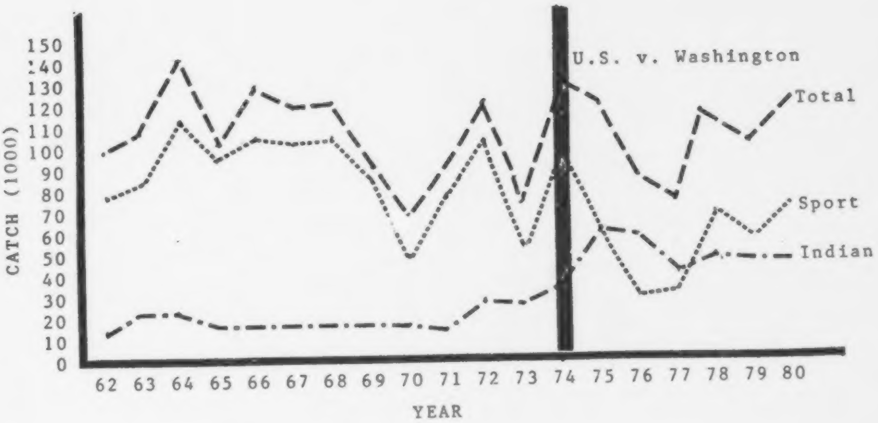
FALSE PLOY

> "SPORT CATCH OF WINTER RUN
> STEELHEAD IN THE BOLDT CASE
> AREA HAS DECLINED 42% FROM
> THE 82,000 FOR YEARS 1962-74"
>
> FRANK LOCKHARD

Discussion: S874 has been advanced as a "conservation" measure to "protect" steelhead, but has nothing to do with preserving the resource. The "conservation" arguments advanced by sportsmen are based upon semantic manipulations of the wise use determinations of management entities responding to political pressures. The term "conservation" has a very specific legal meaning when applied to Indian treaty-protected fishing rights - relating directly to the perpetuation of a run of fish. The Supreme Court adopted this definition after a number of cases were heard in which states had attempted to subordinate the treaty fishing right to wise use decisions that had the practical effect of allowing non-Indians to catch all the fish not needed for spawning purposes. (e.g. see U.S. v. Washington, 384 F. Supp. 312, Washington v. Fishing Vessel Association, 443 U.S. 658, Maison v. Confederated Tribes of the Umatilla Indian Reservation, 314 F. 2nd 169, discussed in F&F p2-33).

S874 seeks to abrogate Indian treaty fishing rights to harvest steelhead in order to allocate the resource exclusively for the special interest and purpose of sportfishing. There is no true resource conservation problem caused by Indian fishing for steelhead or any other species; the rules established by the federal courts ensure that all fisheries must be regulated so as to protect the resource. The courts have never been presented with any credible evidence supporting the contentions of sportsmen that Indian fishing has been detrimental to the resource. It would be absurd for Indians to willfully damage a resource that is so integral to their cultures and economies and in which they have a direct, continuing and enforceable property interest.

Statistics used to support pro-decommercialization contentions are grossly misleading. The above quote by the Director of the Washington Department of Game, for example, does not address the status of the resource but only refers to historical sport catch levels.



CASE AREA STEELHEAD HARVEST
HISTORY

. GREAT FLUCTUATION IN % OF RUN
HARVESTED BY SPORTSMEN

Discussion: When viewed in their proper context, the statistics referenced by Director Lockhart can be viewed in perspective. Sport harvests of steelhead has fluctuated greatly from season to season because of environmental variations, changes in the availability of fish for harvest, and different numbers of fishermen. It is true that the sport harvest of steelhead in the "Boldt Case Area" has declined from levels experienced earlier, but that decline is due to two primary factors: (1) In 1974, the decision of the federal court in U.S. v. Washington determined that state laws that reserved the steelhead for sportsmen were unconstitutional and discriminated illegally against the Indians. Consequently, sportsmen were forced to share the harvest; (2) mismanagement of the resource by the Washington Department of Game and uncontrolled exploitation by sportsmen has adversely affected the steelhead resource (see F&F p21-33) - especially the wild fish.

YEAR	SPORT CATCH	% SPORT	
1970-1	77,100	71	
1971-2	94,600	78	
1972-3	56,400	70	
1973-4	58,900	62	"Boldt" decision
1974-5	60,200	50	
1975-6	29,900	35	
1976-7	32,200	44	
1977-8	69,100	58	
1978-9	57,100	55	
1979-0	70,900	59	

Discussion: Catch statistics extracted from Washington Department of Game Reports, illustrating that sport harvests have not declined appreciably since the "Boldt" decision. Only in two years has the sports catch accounted for less than 50% of the steelhead harvest. The accuracy of sport catches during these two seasons is highly suspect becuase of an organized effort among sportsfishing groups not to voluntarily report their catches in the hopes of generating statistics to support their desire for decommercializing steelhead so they might have exclusive use of the resource for their recreational pleasure. (see F&F p36-40)

BONKER AND GORTON CRY FOUL

ARE INDIANS TAKING MORE THAN THEIR 50% ENTITLEMENT?	INDIAN	SPORT	%
QUEETS	2,298	473	17
QUINAULT	4,207	160	4
ARE SPORTSMEN TAKING MORE THAN THEIRS?			
NISQUALLY	1,318	2,764	68
GREEN-DUWAMISH	4,488	10,168	69
STILLAGUAMISH/SNOHOMISH	10,185	25,006	71
PUYALLUP	22	2,188	99

WHAT'S THE REAL STORY?

Discussion: When Senator Gorton introduced S874 in April of 1981, catch statistics for several rivers in Western Washington were introduced into the Congressional Record allegedly demonstrating the inequities to sportsmen. (e.g. Queets and Quinault). There are also many other rivers in the metropolitan areas near Puget Sound, however, in which the sharing of harvest clearly favors sportsmen (e.g. Nisqually, Green-Duwamish, Stillaguamish/Snohomish, and Puyallup).

What do these catch statistics really represent? They reflect differences in regulation of treaty Indian and sportsfisheries for steelhead in Washington State (see F&F p34-40).

INDIAN FISHERIES ARE STRICTLY REGULATED

50% HARVESTABLE NUMBER

1979-80 SEASON	NISQUALLY	QUEETS
HARVESTABLE	3,000	4,600*
TREATY CATCH	1,318	2,298
SPORT CATCH	2,764	473
		*6,995 ACT.

CATCH NOT A GOOD MEASURE OF OPPORTUNITY

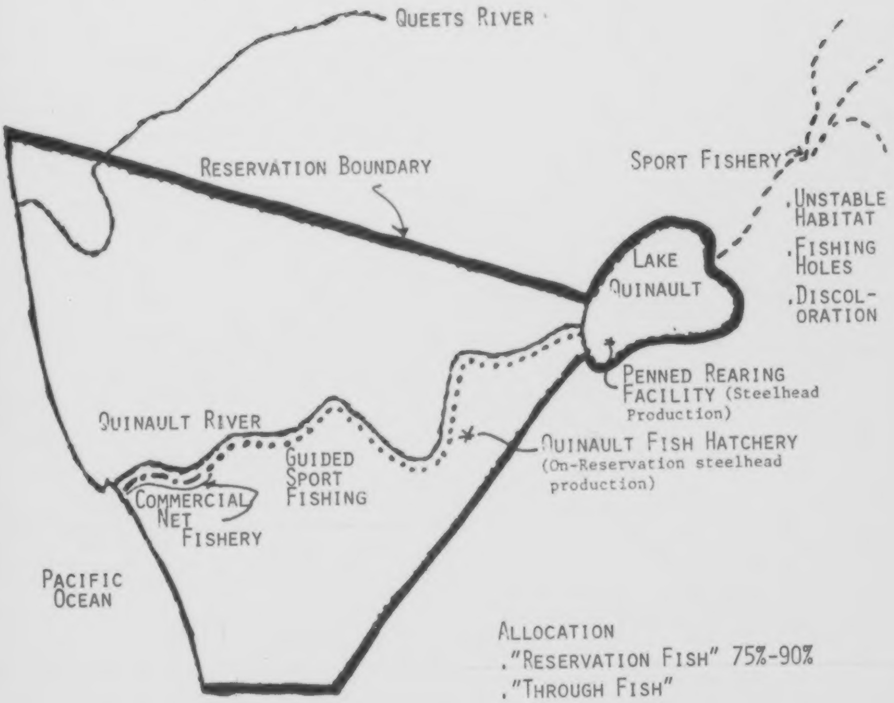
STATE V. PRICE (94 WA 2ND 810, 1980)

Discussion: Catch statistics are not a good measure of the principle governing allocation requirements established under the rules of the federal courts. Each season the number of harvestable steelhead from each run is estimated by the Washington Department of Game and the Indian Tribes. The treaty fishery is then strictly regulated so as to harvest its 50% of the allowable catch. Discrepancies in harvest sharing result because the sport fishery is largely uncontrolled and unrestricted. As examples, consider the experience on the Nisqually River. The harvestable number of fish was 3,000; treaty tribes were entitled to catch 1,500 and sportsmen 1,500. But what happened? The Nisqually tribe harvested 1,318 fish, less than its 50% entitlement; the uncontrolled sportfishery, however, harvested 2,764 fish, over 1,200 fish more than its entitlement. This catch discrepancy occurs because like on nearly all rivers and streams in Western Washington, the Washington State Game Department has no idea how many fish that sportsmen are actually catching until several months after the season is over.

Another example is the Queets. The harvestable number of fish estimated pre-season was 4,600. The Treaty Indian catch was controlled on the basis of this number and took 2,298 fish. The sport fishery, however, because of the remote nature of the river, regulations adopted by the Washington Game Department and the National Park Service, was unable to harvest its full share. Spawning escapement surveys later indicated that sportsmen actually had the opportunity of harvesting 6,995 steelhead without impacting spawning escapement needs. The disproportionate sharing that Senator Gorton cited in the Congressional Record for the Queets River resulted because the sport fishery did not catch the fish available.

A growing problem concerns the accuracy of steelhead catch statistics attributed to Indians. Poaching by non-Indians and conspiracies by non-Indian fish buyers have caused more fish to be charged against Indians than have been actually caught; the first case tried in the Washington Supreme Court on the problem was State v. Price (Non-Indians forged Indian names on landing tickets).

QUINAULT RIVER


QUEETS RIVER
RESERVATION BOUNDARY
SPORT FISHERY
.UNSTABLE HABITAT
.FISHING HOLES
.DISCOLORATION
LAKE QUINAULT
PENNED REARING FACILITY (Steelhead Production)
QUINAULT RIVER
QUINAULT FISH HATCHERY (On-Reservation steelhead production)
GUIDED SPORT FISHING
COMMERCIAL NET FISHERY
PACIFIC OCEAN
ALLOCATION
."RESERVATION FISH" 75%-90%
."THROUGH FISH"

Discussion: On the Quinault River, a slightly different situation exists that requires an understanding of the opportunity rule governing allocation and non-treaty fishing patterns. The vast majority of steelhead returning to the Quinault River (75%-90%) are produced entirely within the boundaries of the Quinault Reservation. Once these fish return to reservation waters, the non-treaty opportunity to catch them has been foregone; tribes have exclusive rights to fish on their reservations so long as the fish do not leave reservation waters to reach waters accessible to sportsmen. Non-Treaty sportfishers are entitled to take up to 50% of the harvestable steelhead destined to return to waters outside the boundaries of the reservation (through fish). The Quinault Tribe has maintained a guided sport fishery on its reservation for decades under its own management perogatives.

The Quinault River has been plagued by environmental problems over the past few years which have impaired the success of sportfisheries. A 100 year flood in the mid seventies made spawning and rearing habitat unstable, altered fishing holes and caused debris accumulations above Lake Quinault; below the lake, mud slides have impaired fishing conditions.

SPORT CATCHES ON QUEETS AND QUINAULT

. REPORTING PROBLEMS
  - ENFORCEMENT - WDG

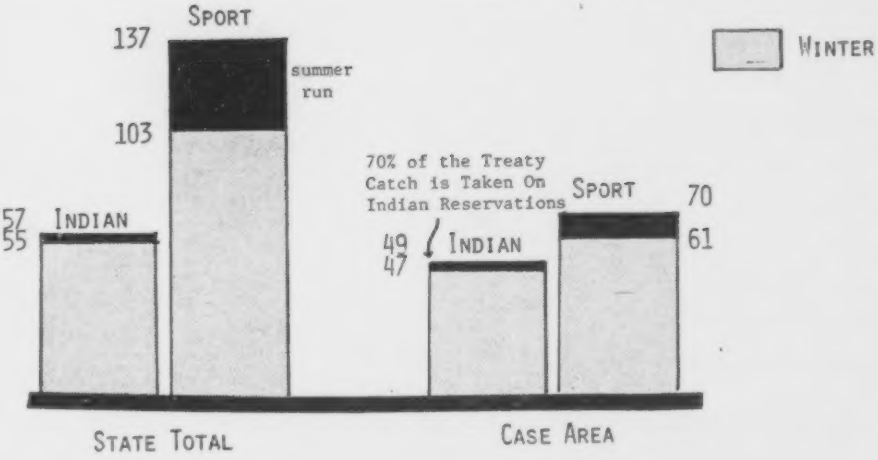
. SEASONS REDUCED 50% BY WDG AND NPS.

. RESIDUAL IMPACT OF 100 YEAR FLOOD

. LONG TERM PROBLEMS
  TOO MANY SPANNERS CAN BE BAD

Discussion: Disparate sharing of the harvest of steelhead on the Queets and Quinault Rivers results because of the characteristics of the sportfishery and the legal standards governing allocation. Like nearly all rivers in Western Washington, enforcement of regulations adopted by the Game Department has been lacking; the accuracy of voluntary reporting of steelhead catches by sportsmen is highly suspect. The inability of sportfisheries to harvest their full share of Queets River fish poses serious potential resource management problems; excessive spawning can actually decrease the productivity of the resource.

STEELHEAD CATCH DISTRIBUTION 1979-80



- .INDIAN FISHERIES HARVEST LESS THAN ½ OF THE STOCKS IN THE CASE AREA 25 114 180
- .DON'T TARGET ON SUMMER RUNS
- .TARGET ON HATCHERY FISH

Discussion: Catch statistics generated by the Washington Department of Game clearly illustrate that sportsmen are accounting for much more than half of the total steelhead harvest both statewide and in the "Boldt case area."

Indian tribes have attempted to minimize their impacts upon sportfisheries. Tribes fish in only 25 streams, while sportsmen fish in 114 streams in the Boldt case area and 180 streams state wide. Tribe's have also elected not to implement target fisheries on summer run steelhead, fish that are highly prized by sportsmen, particularly fly fishermen. Because of different run timing, tribes have also chosen to concentrate their fisheries on smaller, less desirable hatchery fish, leaving more wild fish available to sportsmen.

One of the concerns that has been repeatedly expressed by sportsmen has been over the future of wild fish. Available evidence clearly demonstrates that treaty Indian fisheries have a much smaller impact on wild fish than sport fisheries.

QUILLAYUTE CATCH
of Wild Steelhead

SEASON	TRIBAL	SPORT	SPAWNING
1977-8	0	857	6,189
1978-9	2,601	295	4,340
1979-80	975	1,656	4,707
1980-1	105	1,603	6,799*

* SPAWNING ESCAPEMENT GOAL : 4500

WHO'S FISHING THE WILD STEELHEAD?

Discussion: One example of the impact of treaty Indian and sport harvests of wild run steelhead can be found on the Quillayute River. Data prepared by the Washington Game Department readily shows that the sport fishery has had a greater impact on the wild runs than Indian fishing. (see Table 2, in "The Steelhead Decommercialization Bill and the Quillayute River System," addendum to Statement of Chris Morganroth, Submitted to the Senate Select Committee on Indian Affairs, September 28, 1981).

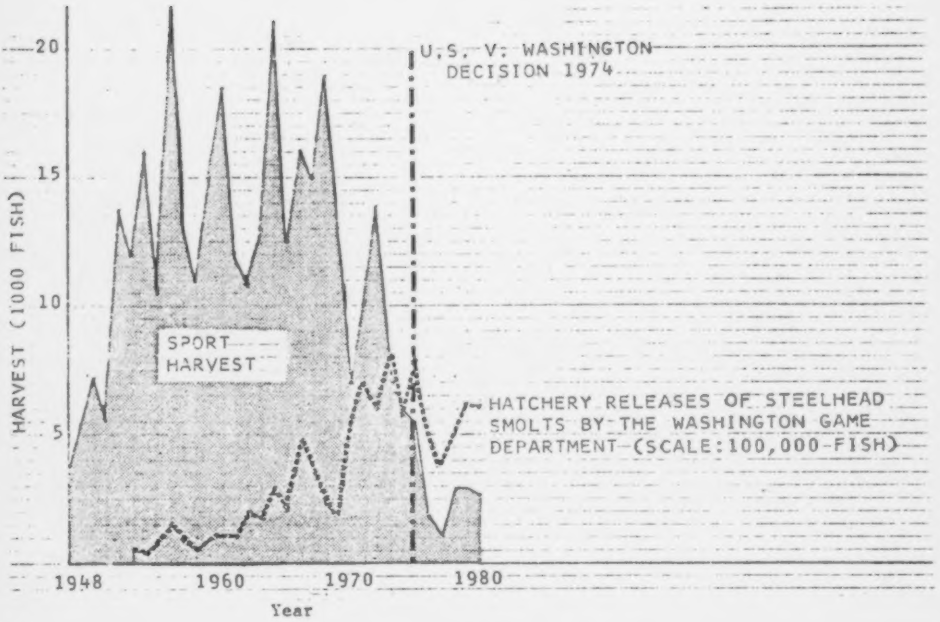
COMPARISON OF TREATY INDIAN AND SPORT FISHERIES

	TREATY INDIAN COMMERCIAL	NON-TREATY SPORT
RIVERS FISHED	Short stretches of 25 river systems	Throughout the watersheds of 114-180 rivers during a several month period
CATCH MONITORING AND REPORTING	Actual daily count of fish taken via mandatory landing ticket system	With very few exceptions, post season estimate based on voluntary reporting via punch card system
ENFORCEMENT OF FISHING REGULATIONS	At least one tribal patrol officer for each fishery	Small number of state enforcement officers responsible for covering thousands of square miles

Discussion: Indian fisheries are conducted within concentrated areas along very limited stretches of some 25 river systems in the Boldt case area. Prior to the start of each season, the Washington Department of Game and tribal managers jointly estimate the number of harvestable steelhead returning to each of these rivers. Tribal managers develop regulations and monitor development of the fishery through such efforts as run size evaluation to provide better estimates of the number of fish actually returning to the rivers and catch sampling to determine the age structure and composition of the harvest (i.e. how much of the catch consists of wild and hatchery fish). Fishing regulations are enforced by tribal officers who patrol the rivers. Catch is monitored daily by both tribal managers and the Game Department to ensure that the treaty allocation is not exceeded. Harvests by treaty fishers are reported daily via landing ticket systems and as a result catch statistics for Indian fisheries are highly accurate actual counts of fish taken. After the season is over, tribal managers conduct spawning ground surveys.

By comparison, sport fisheries operate throughout the lengths of well over 100 streams in the Boldt case area. Only a small handful (about six) enforcement officers from the Game Department are available to monitor the fishing activities of tens of thousands of sportsmen dispersed over a very large geographic area for several months of the year. For the vast majority of streams, the Game Department has no idea of the magnitude of the sport harvest until several months after the season has ended and available punch card data are examined (sport catches are reported via a voluntary punch card system; for the most recent year, 1979-80, only 16% of the punch cards issued were actually returned). In season management of the sport fishery is virtually non-existent. Under such a regulatory system, the sport fishery is near totally uncontrolled and impacts upon the resource are at best unpredictable.

If any fishery presents a threat to the steelhead resource, it is the one conducted by sportsmen, not treaty Indians.

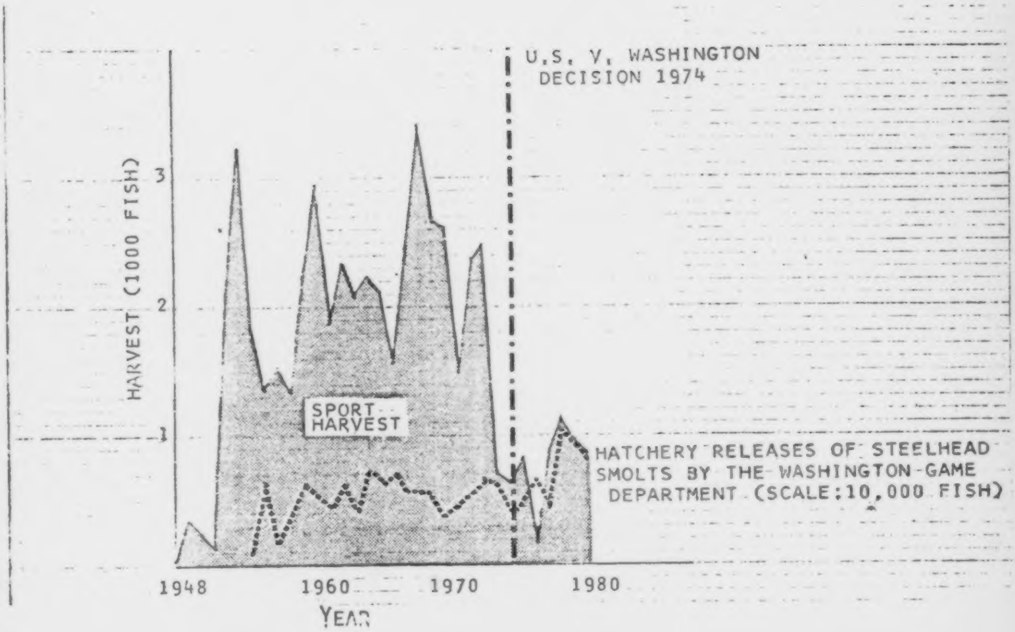


SKAGIT RIVER STEELHEAD CATCH

- .INDIANS WRONGFULLY EXCLUDED FROM HARVESTING PRIOR TO 74-75 SEASON
- .CLASSIC PATTERN OF OVERFISHING BY SPORTSMEN COUPLED WITH ENVIRONMENTAL PROBLEMS (E.G. ALTERATIONS IN FLOW PATTERNS ASSOCIATED WITH HYDROPOWER.)

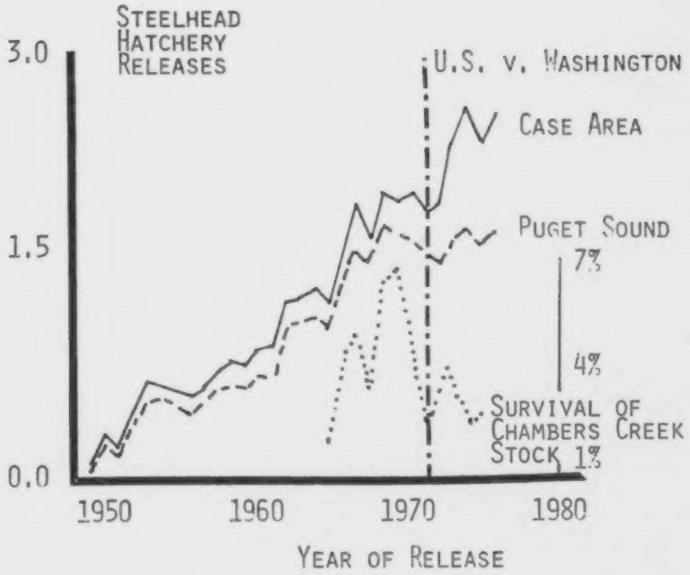
Discussion: Indian fisheries have frequently been blamed for declining sport harvests. It is clear, however, that diminishing sport harvests are not the result of over-fishing by Indians. One river commonly cited by sportsmen is the Skagit. Historical records demonstrate that over-fishing by sportsmen and poorly planned enhancement programs conducted by the State of Washington are far more significant factors (see F&F, p23-28).

SPORT HARVEST - SAMISH



. SKAGIT LOOK ALIKE - COMMONALITIES
. NO SIGNIFICANT INDIAN FISHERY

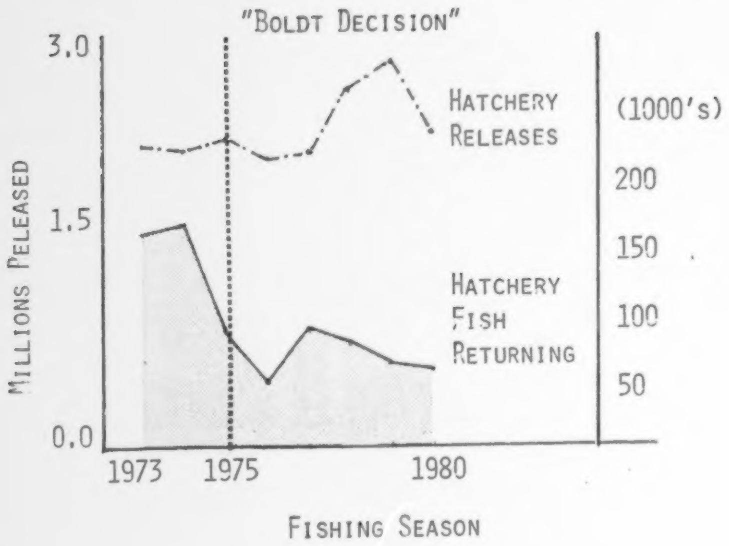
Discussion: The catch history on the Samish River (which has no significant Indian harvest of steelhead) exhibits a remarkably similar pattern to that experienced on the nearby Skagit River. In both instances, the catch pattern is classically associated with a fishery that has been inadequately controlled so as to protect the productivity of the resource. Hatchery practices and mismanagement by the Washington Department of Game have created a situation where the steelhead harvest on the Skagit and Samish Rivers is now supported primarily by hatchery fish.



HATCHERIES: AN EASY ANSWER?

- .ENCOURAGES OVERFISHING OF WILD RUNS
- .ALTERED RUN TIMING
    - .SHORTER SEASONS
    - .HARVEST MANAGEMENT CONFLICTS
- .ECOLOGICAL IMPACTS
    - .COMPETITION WITH WILD RUNS
    - .REDUCED PRODUCTIVITY

Discussion: Throughout the history of steelhead management in the State of Washington, the Department of Game has elected to take the expedient route of turning to hatcheries to produce more fish rather than attempt to regulate and control sport fisheries to levels sustainable by the resource. A great deal of scientific evidence is now coming to light concerni[illegible] folly of such practices (see F&F p58-62).



HATCHERY PRODUCTION AND CONTRIBUTION

Discussion: When questioned regarding the sustained harvest of steelhead after the "Boldt Decision", various officers of the Washington Department of Game have explained that increased hatchery plants have supported the catch. While increased numbers of hatchery fish have been planted in the streams, the survival of those fish has been decreasing; the practical effect has been fewer numbers of hatchery produced steelhead available for commercial and sport harvest. (see F&F p58-62).

FUNDING: ENHANCEMENT

FACILITIES

.STATE	$ 7,807,320	23%
.FEDERAL	$10,331,238	31%
.UTILITIES	$15,782,901	46%

FISHERY MANAGEMENT

.STATE	42.9%
.FEDERAL	50.1%
.PRIVATE/LOCAL	7.0%

ANADROMOUS FISH ACT

.GREEN
.SKYKOMISH
.BEAR SPRINGS
.TOKUL
.BOGACHIEL
.SHELTON
.CALAWAH

D-J (Dingell-Johnson)

.BARNABY
.WHITEHORSE
.SAUK

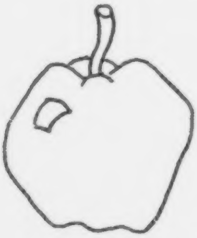
Discussion: Sportsfishing interests have tried to justify decommercialization of steelhead on the basis that license fees pay for all the costs of management and enhancement. Such assertions are totally false. The vast majority of steelhead production facilities in Washington State were constructed as mitigation to compensate for habitat lost due to dams. Operational costs for the major steelhead productional facilities are supported by Anadromous Fish Act and Dingell Johnson Funds (see F&F, p41-42).

"VALUE" ARGUMENTS BASED ON BAD ECONOMICS

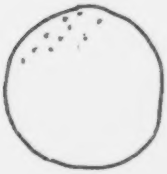
$124 PER SPORT-CAUGHT STEELHEAD

$ 20 PER COMMERCIALLY CAUGHT FISH

$ spent in pursuit
of
RECREATION



EX-VESSEL PRICE PER POUND
paid to fishermen



Discussion: As justification for decommercialization, sportsmen allege that a steelhead is far more valuable for recreational than commercial purposes. The "value" arguments employed by sportsmen not only fail to recognize and respect the unique values steelhead holds for treaty tribes, they are based upon economically fallacious premises. (see F&F, p43-52).

SPORTFISHING "VALUES"

WHAT'S IMPORTANT IS FISHING NOT FISH

Discussion: The so-called economic "values" associated with sport fishing for steelhead are generated by the expenditure method - by adding up all the dollars spent to try to catch steelhead (bait, fishing equipment, transportation, lodging, food, etc.) and dividing by the number of fish actually caught. The commodity being valued through such a procedure is the act of fishing for recreational enjoyment, not the fish itself (see F&F p47-52).

SCARCITY INCREASES VALUE

Discussion: Obviously, using such procedures advocated by sportsfishing interests, the "value" of a sport-caught steelhead varies inversely with the success rate of the angler. For example, if there were so many more steelhead in the rivers that the catch rate per trip were to be doubled, the "value" would be halved. If the argument raised by the sportsmen is followed to its logical conclusion, the greatest economic benefit per sport caught steelhead would accrue to society by making the fish scarcer and scarcer until sportsmen would no longer be willing to spend their money to go fishing.

STEELHEAD IS REPLACEABLE

Discussion: The "values" per sport caught steelhead cited by prodecommercialization interests are associated with the dollars people are willing to pay in pursuit of recreation. If fishing for steelhead is unavailable for some reason, the money available for recreational enjoyment would be spent elsewhere - for example, to try to catch salmon, trout, bass, or other fish, camping, hiking, bowling, going to the movies or to restaurants, etc. In other words, society would not lose the "values" associated with sport fishing for steelhead even if there were no sport fishing for steelhead.

WHAT'S SO IMPORTANT ABOUT LESS THAN .1% OF THE SPORT CATCH?

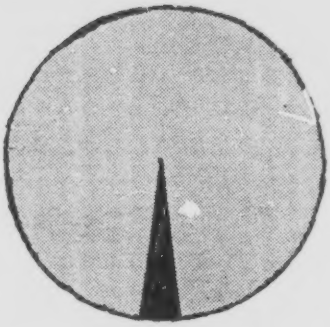
1 OF 76 SPECIES

82% DON'T FISH FOR STEELHEAD

11%	CATCH	0	
2%	CATCH	1	
1%	CATCH	2	
3%	CATCH	≥ 3	< 10
1%	CATCH	≥ 10	< 20
-%	CATCH	≥ 20	

Discussion: While the steelhead occupies an extremely important role in the maintenance of the economies and cultures of the treaty tribes, its improtance to sportsfisheries is questionable. Steelhead comprise far less than one tenth of one per cent of the sport harvest of all species of fish in Washington State; steelhead is only one of 76 species of fish caught by sportsmen in the State; 82% of the sportsmen who buy fishing licenses do not fish for steelhead at all - only 4% of the sportsfishermen of the State catch more than 3 steelhead/year. Obviously decommercialization would benefit only a small, select of sportsmen who don't want to share the resource with treaty Indians

WHAT'S SO IMPORTANT ABOUT 3.6% OF THE CATCH?



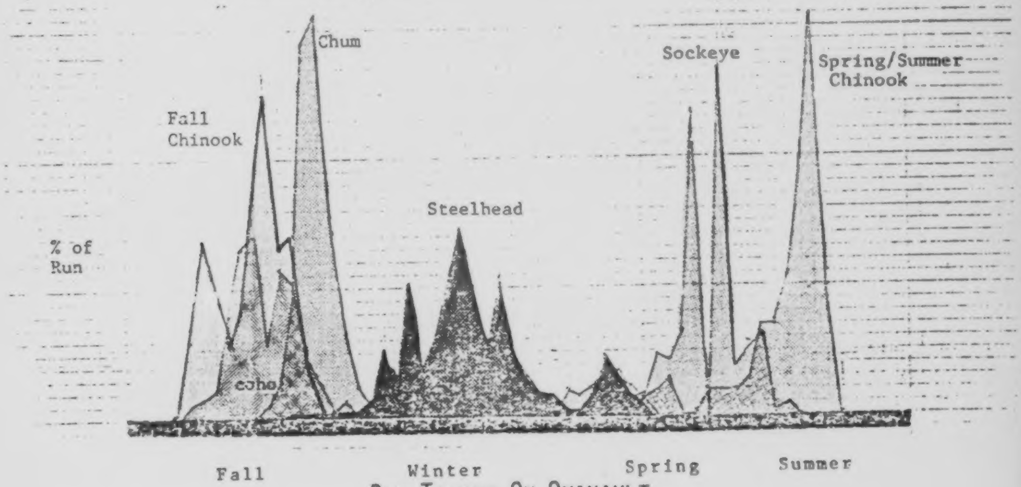
Discussion: Proponents argue that since steelhead comprises only 3.6% of the total treaty catch of all species of fish, that decommercialization won't hurt the tribes. While such statistics may be reasonably accurate on a regional basis, there is considerable variation among the tribes as to the importance of steelhead to their separate economies. (see F&F, p43-48).

RIVER	% CATCH	% INCOME
QUILLAYUTE	21.6	24.0
QUINAULT	23.5	34.6
HOH	63.9	66.5
QUEETS	58.9	70.6

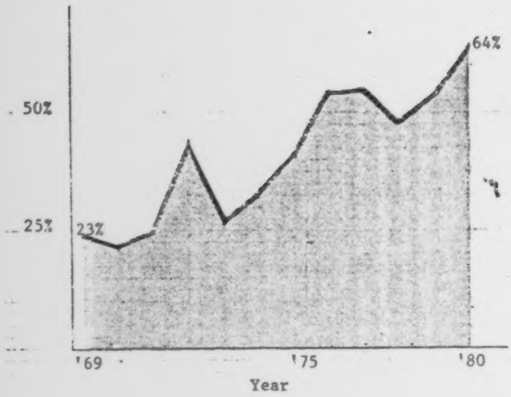
Discussion: For some tribes, steelhead comprises a very large proportion of the total catch and income. Steelhead, because of its availability for nearly six months of the year and its low exploitation by ocean fisheries, serves as an extremely important resource that provides for the continuity of tribal fishing societies. Steelhead is the only fresh fish available to support the tribes during the winter months.

To the tribes, steelhead is just another species of salmon. Like all other species of fish upon which tribal fishing societies depend, the steelhead has a unique place in the cultures, religions and economies of the Northwest Tribes.

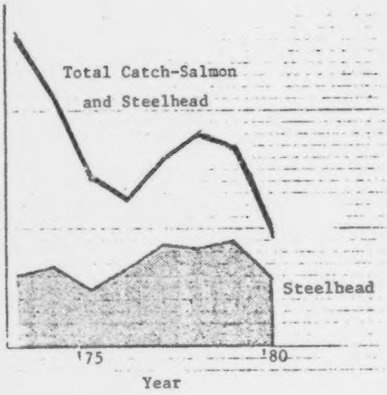
STEELHEAD IS NOT REPLACEABLE



RUN TIMING ON QUINAULT



% OF TOTAL SALMON AND STEELHEAD CATCH CONSISTING OF STEELHEAD FOR THE HOH TRIBE



RECENT TRENDS IN HARVEST OF HOH TRIBE

Discussion: For some tribes, steelhead has become ever more important because of the absence of adequate regulatory controls on ocean salmon fisheries. The Hoh Tribe, for example has become more dependent upon steelhead, not because of increasing harvest, but because the number of salmon returning to the rivers has decreased. Where in 1969, 23% of the total catch consisted of steelhead, by 1980, the percentage had increased to 64%.

MANAGEMENT

ESSENTIALS

- .RUN SIZE
- .ESCAPEMENT NEEDS
- .REGULATION OF HARVEST

COSTS - W.D.G.	1982 BUDGET
$ 65,000	ADMINISTRATION
422,082	RESEARCH
732,515	DATA AND MANAGEMENT
589,211	REGULATION
$1,808,808	TOTAL

WHAT WOULD THE REAL COST BE TO MANAGE SPORTSMEN?

Discussion: In support of S874, proponents of decommercialization argue that the costs of steelhead management exceeds the commercial value of the fish for Indians. Such an argument not only ignores the true multi-dimensional values of steelhead to Indian tribes, it rests upon the false presumption that only the treaty Indian fishery requires management and regulation. The actual costs of controlling the sport fishery so as to protect the resource are neither considered nor recognized. As with publicly provided recreation generally, sport fishing is not paid for by the beneficiaries of the service provided by the resource; the cost of subsidizing the recreational enjoyment of a small number of sportsmen is borne by the public and the resource. Because of the difficulty in regulating sport fisheries to protect the resource, angling poses a serious threat to the perpetuation of the resource.

The costs of truly managing the sport fishery would be enormous. Any serious and legitimate questions about costs of management and regulation would have to conclude that the interests of the general public and the resource can best be served by prohibiting sportfishing for steelhead and allocating the entire resource for the use of treaty tribes. (see F&F, p53-57).

Management costs cited by sportsmen attribute all costs to treaty Indian fisheries. While it is true that the Department of Game did not have any management program and capabilities prior to U.S. v. Washington, this does not by any means imply that sportfishing does not need to be managed. The complaints of many sportsmen can be traced to historical mismanagement by WDG. The activities implemented as a result of treaty fishing interests are essential to responsible resource management, no matter who catches the fish.

THE REAL PROBLEMS CONFRONTING STEELHEAD

- SCAPEGOATING - INDIAN FISHING IS NOT THE PROBLEM
- CONFRONTATION POLITICS - THERE ARE ALWAYS THOSE WHO SEEM TO PROFIT MORE FROM CONFLICT THAN COOPERATION
- COMPETING DEMANDS FOR RESOURCES - THE WATER-FISHERIES-POWER-AGRICULTURE STRUGGLE FOR CONTROL
- MISMANAGEMENT
  - HABITAT DETERIORATION
  - INSUFFICIENT INFORMATION CONCERNING THE RESOURCE
  - INADEQUATE REGULATION OF SPORT FISHERIES
  - POORLY PLANNED ENHANCEMENT PROGRAMS

Discussion: For decades, Indian fishing has been used as a scapegoat by those who have refused to address the real problems confronting the management of the steelhead resource. Those problems are founded in the ill-defined realm of emotion and politics. Eliminating Indian fishing for steelhead will not solve the problems facing sportsmen: environmental deterioration and the necessity for adequate regulation.

In order to facilitate the resolution of long-standing fishery problems in the Pacific Northwest, the Congress, in December 1980, enacted legislation, PL96-561, the "Salmon and Steelhead Conservation and Enhancement Act of 1980", designed to encourage state, federal and tribal interests to work cooperatively together in a common direction for the benefit of the resource and all those who depend upon it for their livelihoods and recreation. The introduction of S874 threatens to undermine the tremendous progress that has been made in recent years and destroy the positive spirit embodied in the responsible process established by PL96-561.

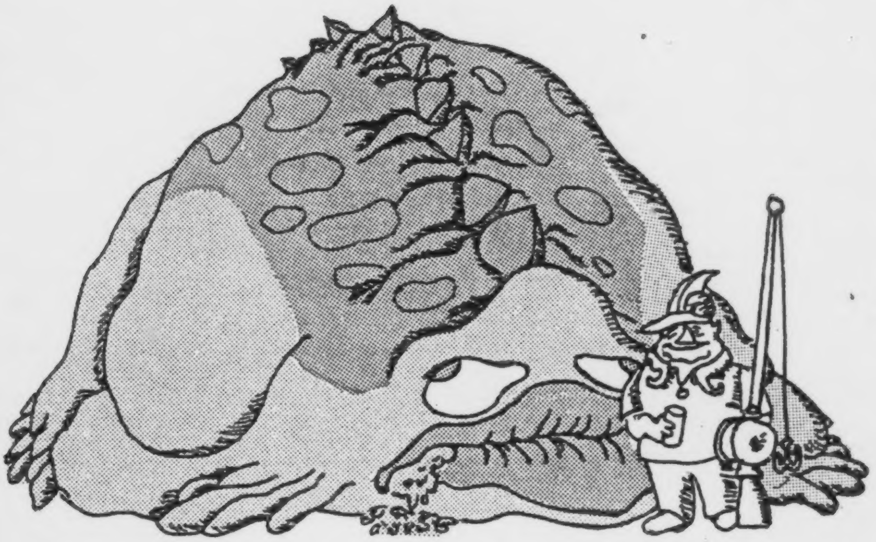
SUMMARY

	TREATY	SPORT
● MANAGEMENT		
* CONTROL OF HARVEST	X	
* COST EFFICIENCY OF MGMT	X	
* RESOURCE & HABITAT PROTECTION	X	
* IMPACT ON WILD FISH STOCKS	X	
● IMPORTANCE	CULTURAL ECONOMIC RELIGIOUS SUBSISTENCE PROPERTY LEGAL OBLIGATION	RECREATION
● COST OF TAKING	YES	NO

Discussion: In summarizing the conclusions that can be drawn from available information concerning the importance and management of steelhead,

- Treaty fisheries can clearly be more effectively controlled (and at substantially less management expense) so as to protect and preserve the resource than can sportfisheries;
- For the treaty tribes, steelhead is a resource that is integral to their way of life - it has cultural, economic, religious, and subsistence significance. For sportsmen, the resource is important for the recreational pleasure it provides - a service that is fully replaceable by some other activity like bowling, dancing, hiking, fishing for other species, hunting, etc;
- The rights of Indian people to take steelhead for their own purposes is protected by treaty obligations with the United States. S874 contains several provisions that, if enacted, would clearly and unequivably abrogate Indian treaties. Such abrogation would require compensation for the taking of property rights guaranteed by Article VI and the Fifth Amendment to the U.S. Constitution. The amount of compensation required would be astronomical - how can a people be adequately compensated for the destruction of their culture and their future ?
- If the Congress is genuinely concerned over protecting the steelhead resource, minimizing the costs of responsible management, eliminating needless public expense to subsidize the recreational enjoyment of a few select citizens, and uphold the law of the land, rather than considering S874, it should enact legislation to de-sportify steelhead.

THE ULTIMATE STEELHEAD ?



"THEY'RE NO GOOD TO EAT. THEY'RE TOO BIG TO STUFF AND HANG OVER MY FIREPLACE. BUT THEY PUT UP A HELL OF A FIGHT. IT WAS REALLY SOMETHING, MY KILLING THIS ONE, 'CAUSE THERE'S HARDLY ANY OF THEM LEFT."

Senator GORTON. We appreciate your testimony.

We appreciate the patience of all.

Before adjourning I would like to insert into the record the statement of the National Tribal Chairman's Association.

Without objection, it will appear in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION, SUBMITTED BY PHILLIP MARTIN, PRESIDENT

The National Tribal Chairmen's Association is organized for the purpose of presenting the views of American Indian people, through the voices of their duly selected Indian governmental leadership, on public policy questions and issues of concern in Indian country involving federal-Indian relations. One such issue—S. 874, "The Steelhead Trout Protection Act," sponsored by Sen. Slade Gorton (R-Wash.)—is now before the Senate Select Committee on Indian Affairs, which has the responsibility to advise the Senate on actions it should take when acting in its constitutional role as a part of the Trustee, United States, in regard to national policy explicitly or implicitly affecting Indian nations, tribes, pueblos, bands, communities and individuals.

The NTCA urges the Committee to review S. 874 in light of several factors:

(1) The guarantee of the United States Constitution that treaties shall be the supreme law of the land;

(2) The solemn promises, honorably made and agreed to in treaties between the Northwest Indian tribes and the federal government, that the United States would protect and defend the Indian traditions and lifestyle, especially in relation to fishing, which was and is the focus of the tribal culture and economy of those who would be affected by the bill;

(3) The sad history of post-treaty broken promises and persistent attacks against Indian fishing rights by non-Indians and their governmental and corporate entities which have resulted in more damage to the Indian people than resulted from the pre-treaty era's undisguised warfare—including changes in health, well-being, life-span, societal structures, religious practices and family kinship, all combining to erode the very existence of tribes and their citizenry;

(4) The great damage to the Northwest fish which occurred during the decades when Indian people were deprived of fish and when non-Indian people over-harvested, corporations polluted and destroyed and foreign vessels depleted the once-bountiful salmon and steelhead resource;

(5) The slow and difficult path through the legal process in search of justice—seven times before the U.S. Supreme Court in this century, four times since 1968—with each court affirmation of the Indian treaty fishing right resulting in another more vociferous attack against the Indian exercise of that right;

(6) The sponsor of this bill, as Attorney General of Washington State, led the attack against the Indian treaty fishing rights, lost that fight before the Supreme Court and is attempting to use the power of his new position to accomplish in the legislative branch what he failed to do through the judicial process;

(7) The tribal management of the fishery resource, the multi-jurisdictional management cooperation and the recent acts of Congress in this area are moving in a positive, beneficial direction for the resource and economies of the entire Northwest, and should be given an opportunity to continue without the added layer of contentiousness and courtroom battles that would result from this bill being seriously considered and passed.

The NTCA urges this Committee to review this history and reject the approach suggested in S. 874. When the United States and the Northwest Tribes entered into treaties, the tribes intended to maintain their identity as cultural fishing societies, reserving for themselves certain portions of their homelands and, importantly, their traditional fishing places; the United States received, and continues to benefit from, the lands ceded by the tribes. The treaties contemplated that the tribes would sustain themselves through the full exercise of their fishing rights. This bill proposes to take away these self-sustaining means, disrupt an essential winter fishery and, thereby, abrogate the intent of the treaties. The courts have clearly and forcefully rejected this approach, consistently affirming the treaties.

"The taking of anadromous fish [steelhead] from usual and accustomed places, the right to which was secured in the Stevens' treaties, constituted both the means of economic livelihood and the foundations of native culture. Reservation of the right to gather food in this fashion protected the Indians' right to maintain essential elements of their way of life, as a complement to the life defined by the permanent homes, allotted farm lands, compulsory education, technical assistance and pecuniary rewards offered in the treaties. Settlement of the West and the rise of industrial America have insignificantly circumscribed the opportunities of members of the Treaty Tribes to fish for subsistence and commerce and to maintain tribal traditions. But the mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged on their honor to uphold." (United States v. Washington, 384 F. Supp., 312, 406–407 (W.D. Wash. 1974))

The Congress has acted in a consistent manner to reject the approach suggested in S. 874, from the initial ratification of the treaties, through the rejection of similar abrogation measures proposed five times in the past decade, to the actions of the 96th and 97th Congresses to authorize and fund a sound and conciliatory approach to the tribal/state/federal management of the Northwest salmon and steelhead. This bill is of the highest concern to Indian tribes across the country for two reasons: (1) its deleterious effect on the Northwest tribes, and (2) the federal-Indian policy shift its passage would represent. The United States has voiced its policy to the world community of nations, as well as to the Indian nations, stating most clearly its position that the Indian treaties are valid, the fishery resource must be protected and the tribal right to fish for commercial, subsistence and ceremonial purposes is secure, even though the treaty-fishing issue is controversial.

"Indian fishing has been the subject of serious public and political controversy. The Federal Government—despite tremendous opposition from non-Indian communities—has used its authority to assert the full range of fishing rights reserved to the tribes when the reservations were created. The government also recognizes the need to protect the resource. The government recognizes the right of these tribes to fish for commercial, as well as for ceremonial and subsistence purposes.

The United States Government has actively sought to protect Indian fisheries from environmental degradation, from the potential negative consequences of non-Indian diversion of waterways for agricultural and industrial purposes, from excessive non-Indian commercial and sport fishing, and from other dangers to the resource.

"When litigation cannot be avoided, the Federal Government often assumes trustee responsibility for the defense of Indian treaty rights in the courts. The Federal Government's commitment to protect Indian rights—even if this would mean confrontation with a state—is exemplified by an emotionally charged fishing rights dispute in Washington State.

"In 1974, a landmark court decision (*U.S.* v. *Washington*) was announced, affirming the treaty fishing rights of 19 Northwest Indian tribes. The decision declared these tribes entitled to catch up to half the harvestable fish and to participate jointly with the State of Washington in the management of their fishery resources. State officials, institutions, courts and non-Indian fishers refused to accept and abide by the decision and court orders.

"Finally, in the middle of the 1977 fishing season, the federal courts, at the recommendation of the Administration, were forced to take over management of the fishery. Rising to the challenge in the face of massive illegal fishing by non-Indians, strong public emotion and legal obstacles in the State, the federal agencies pooled their resources to aid the federal court in managing the fishery. On July 2, 1979, the Supreme Court ruled that Indian tribes in the Northwest are entitled by treaty to half the harvestable catch, warning State authorities to comply." (Commission On Security and Cooperation in Europe, "Fulfilling Our Promises: The United States and the Helsinki Final Act" (Report of November, 1979))

The National Tribal Chairmen's Association opposes S. 874 (NTCA Resolution No. 8/81-7, attached). We urge this Committee to reject this bill and to voice its objection clearly.

Senator GORTON. We thank you all.

The hearing stands adjourned.

[Whereupon, at 5:55 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL STATEMENTS AND RELATED MATERIAL RECEIVED FOR THE RECORD

AK-CHIN INDIAN COMMUNITY COUNCIL

XXXXXXXXX Route 2, Box #27
Maricopa, Arizona 85239
Telephone: (602) 568XXXX 2227

1981 SEP 15 PM 3:05

Resolution No. A - 54 - 81

WHEREAS, the Northwest Indian Fishing Treaty Rights to fish for salmon, and steelhead for commercial, subsistence, and cultural purposes has been upheld twice by the Supreme Court, and

WHEREAS, S-874 would be another attempt to abrogate the rights of Indian people; thus, potentially setting up a precedent to do likewise on rights of Indians, whether it be treaties or otherwise, throughout the country.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the foregoing, the Ak-Chin Indian Community Council very strongly opposes Bill S-874 and its companion Bill HR-2978; further, the Ak-Chin Indian Community Council supports National Tribal Chairmen's Association Resolution No. 8/81-7 attached and made a part of this resolution.

BE IT FURTHER RESOLVED, that copies of this resolution be distributed among the members of the Select Committee on Indian Affairs as well as other individuals.

C-E-R-T-I-F-I-C-A-T-I-O-N

Pursuant to authority contained under Article VIII, Section 1, (a) and (c) of the Articles of Association of the Ak-Chin Indian Community, approved by the Secretary of the Interior, December 20, 1961, by a quorum of 4 members present at a regular meeting held on September 2, 1981, at Maricopa, Ak-Chin Indian Reservation, Arizona, by a vote of 4 for, 0 against, 0 not voting, and 1 absent; the foregoing resolution was adopted.

Wilbert J. Carlyle
Wilbert J. Carlyle, Chairman
Ak-Chin Indian Community Council

ATTEST:

Leona M. Kakar
Leona M. Kakar, Sec.-Treas.

APJ

REC'D SEP 1[illegible] 1981

September 15, 1981

Mr. Timothy Woodcock
Staff Director
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Woodcock:

On behalf of the Association for Public Justice, I hereby request time to testify before the Senate Select Committee on Indian Affairs in opposition to S. 874 at the hearing on September 28, 1981. The Association for Public Justice is a Christian citizens organization working for justice in all areas of public life. Justice for all cultural, ethnic and religious groups, including Native Americans, is an area of ongoing APJ concentration and the concern which directly relates to the issue at hand.

Although APJ is not the national voice of a denomination, but rather a membership organization not unlike Common Cause, for example, we have been working together on this and other Indian issues with Steve Linscheid of the Friends Committee on National Legislation. We hoped to appear before the Indian Affairs Committee as part of a panel of denominational and religious groups.

Steve has just informed me, however, that such groups will likely not be given time to testify on this bill on the 28th. If that proves to be true, APJ will submit written testimony for the record.

I am enclosing some information regarding APJ and hope that you will reconsider the decision not to allow "religious" groups to testify.

Sincerely,

Joyce R. Campbell

Joyce Ribbens Campbell
Washington Coordinator
779-2375

Enclosures

ASSOCIATION FOR PUBLIC JUSTICE
BOX 56348, WASHINGTON, D.C. 20011

APJ

ASSOCIATION FOR

PUBLIC
JUSTICE

Working for justice for all, guided by Biblical revelation and belief in the Lordship of Jesus Christ.

APJ believes that achieving public justice demands informed and organized political action—based on Biblical principles.

BOX 56348
Washington, D.C. 20011

What is APJ?

APJ is an association of citizens whose aim is to nurture responsible, active citizenship in accord with Christian political principles. Political parties in the U.S. are not organized to carry out principled programs, and most interest groups are oriented to a single cause. Consequently a vacuum is left in our political life that ought to be filled by associations that address the full range of political issues based on comprehensive political philosophies. PUBLIC JUSTICE believes that biblical revelation can guide us to the fulfillment of our responsibility to live justly with all people.

What is APJ doing?

The association is continuing to build a national Christian citizens movement through education and organization and to serve government agencies and office-holders with analysis of issues based on its understanding of public justice. Program development, conferences, and publications are planned by a staff working closely with a national board. Regional coordinators are appointed to encourage membership, the development of local chapters, and understanding of the Association's political principles and work. An ongoing program of public testimony has presented position papers before the U.S. Congress and state legislatures on such issues as freedom in education, energy, and justice in agriculture.

The Basis of APJ

We believe
1. that any establishment of justice in the world is possible only because of God's judgment and redemption of the creation in Jesus Christ who, as King of kings, possesses all authority in heaven and on earth. Out of the power of His resurrection all authority on earth is delegated by Him as a responsible stewardship. He delegates this authority directly to institutions such as families, schools, churches, and the state.

2. that the state should have its specific identity as a territorial legal community of public justice. "Public Justice" indicates the normative calling of the state whose legitimate functions are established internally by public legal principles and limited externally by the task which God delegates directly to other social institutions. The proper task of the state is to bind together, in a public legal community, all persons, groups, and institutions within its territory.

3. that government is the office of human authority within the political community (state) which is called by God to establish, enforce, and adjudicate laws for the sake of public justice, and that citizens of the state may, through elected representatives with a free mandate, legitimately exercise influence in legisltion and in the general directon of the policies of their government.

4. that the principles of public justice demand of government an equitable handling of the goods, services, welfare, protection, and opportunity that it controls, without penalty or special advantage to any person, organization, institution or community due to religious, racial, linguistic, sexual, economic or other social and individual differences.

5. that the policies of government should be founded on the recognition that the ongoing development of human culture can thrive only in responsible freedom. Government therefore has no authority to direct society by attempting to gain control of the internal life of non-political communities, institutions, and organizations. Rather, it should restrict itself, in accord with the principles of public justice, to encouraging, protecting, and making room for the development of the full range of cultural life, giving special attention to those minority groups or aspects of human culture which may from time to time be oppressed or in danger of losing their freedom to develop.

6. that no person or community of persons anywhere ought to be compelled by governmental power to subscribe to this or any other political creed, and that the government of any state ought to honor the conscientious objections that any of its citizens may have against a governmentally imposed obligation, provided these objections do not conflict with the demands of public justice.

What can I do?

You can join in the work for justice by becoming a member of PUBLIC JUSTICE. Fill in this form, clip and mail it today. If you are already a member, you can pass this brochure on to a friend.

I (We) want to join the Association for **PUBLIC JUSTICE**

Annual Membership Dues

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Student	$10
Student Couple	$15

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☐ Enclosed is my (our) membership fee of $__________.

☐ Enclosed is a gift for the ongoing work of PUBLIC JUSTICE $__________.

☐ Please send me more information about the Association.

(For a tax-deductible gift, write your check to "A.P.J. Education Fund")

(Dues are not tax-deductible and should be paid to "Association for Public Justice")

The APJ National Board is elected by the members. At present the Board consists of the following persons:

Chairperson, Jerry Herbert, Executive Director, Carolina Study Center, Durham, North Carolina
Vice Chairperson, Stephen V. Monsma, State Senator, Grand Rapids, Michigan
Secretary, Robert Eells, Assistant Professor of History and Political Science, Rockmont College, Denver, Colorado
Calvin De Witt, Professor, Institute for Environment Studies, Madison, Wisconsin
Gail Jansen, Attorney, Tucson, Arizona
Karen De Vos, Promotions Director, Christian Reformed World Relief Committee, Grand Rapids, Michigan
Roger De Stigter, Field Superintendent, De Stigter Bros. Construction Co., Sioux Center, Iowa
James White, Executive Director, Near North Side Community Organization, Chicago, Illinois
James Polet, Toolmaker, Trans-Matic Manufacturing Co., Holland, Michigan
Daniel De Groot, Pastor, Christian Reformed Church, Rock Valley, Iowa

APJ National Staff:

James W. Skillen, Executive Director
Joyce Ribbens Campbell, Washington Coordinator

The APJ Education Fund

The APJ Education Fund is an educational and research organization that seeks to provide perspective on public life from a biblical perspective. Through its analysis of public policies, its regular PUBLIC JUSTICE REPORT, and its other publications, the Fund is working to develop a contemporary Christian view of government and the state. Functioning within IRS regulations as a tax-exempt organization, the Fund solicits tax-deductible contributions.

Public Policy Research Project

The APJ Education Fund regularly sponsors research projects. One of its current projects is seeking to clarify the proper role of government in relation to agriculture and energy, environment, and foreign policy. For further information about the Fund write: James Skillen, Executive Director, APJ Education Fund, Box 56348, Washington, D.C. 20011

APJ and Education Fund Publications

Justice For All: The Basis and Vision of the Association for Public Justice

Justice For Education: A Position Paper

Justice For Representation: A Proposal for Revitalizing our system of Political Participation

Christians Organizing For Political Service: A study guide based on the work of APJ

APJ association for
PUBLIC
JUSTICE

A.P.J. EDUCATION FUND

"JUSTICE FOR ALL: THE RIGHT OF POLITICAL PARTICIPATION"

THE THIRD INTERNATIONAL CHRISTIAN POLITICAL CONFERENCE

August 24-27, 1979
Dordt College
Sioux Center, Iowa

Sponsored by the Association
for Public Justice

"JUSTICE FOR ALL . . .

This year's conference will focus on problems of political participation and representation in modern democracies.

Why are fewer and fewer Americans voting?

What is behind political apathy and the feelings of powerlessness and disinterest among citizens?

Are minority groups adequately represented in the American system?

What about other parts of the world?

What will happen to Quebec in the future?

How do citizens participate politically in other countries?

What should Christians be doing to make a proper contribution to the contemporary political process?

These are some of the questions that will be considered by selected speakers.

. . . THE RIGHT OF

POLITICAL PARTICIPATION"

FRIDAY, AUGUST 24

Afternoon: Keynote Address

H. Evan Runner, Professor of Philosophy, Calvin College, Grand Rapids, Michigan.

Evening: Banquet

Michael Novak, Columnist, social critic, scholar, and author of The Rise of the Unmeltable Ethnics.

SATURDAY, AUGUST 25

Seminars Led by

Bob Goudzwaard, Professor of Economics, Free University, Amsterdam.

✓ Robert Martin, Makah Indian Nation, Neah Bay, Washington.

John Perkins, Voice of Calvary Ministries, Jackson, Mississippi.

Chief Minister Gatsha Buthelezi, Leader of the Zulu people, South Africa.

And Others

SUNDAY, AUGUST 26

Rally

Tom Skinner, President, Tom Skinner Associates, New York.

MONDAY, AUGUST 27

Seminar & Concluding Session

Rockne McCarthy, currently Fellow at the Calvin Center for Christian Scholarship, Calvin College, Grand Rapids, Michigan.

REGISTRATION FORM

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Sioux Center, Iowa 51250

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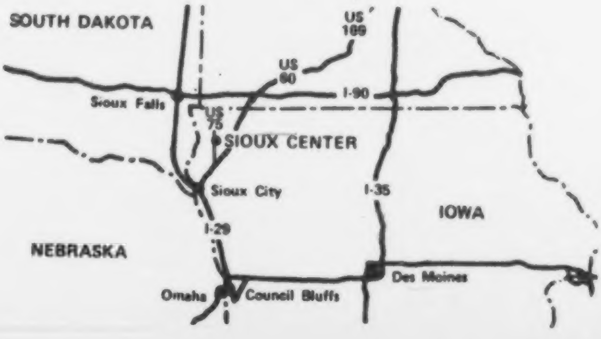
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What is PUBLIC JUSTICE?

PUBLIC JUSTICE is an association whose aim is to nurture responsible, active citizenship. Political parties in the U.S. are not organized to carry out principled political programs after winning elections, and most interest groups are oriented to a single cause or issue. Consequently a vacuum is left in our political life that ought to be filled by associations that address the full range of governmental obligations and political issues on the basis of comprehensive political philosophies. PUBLIC JUSTICE believes that biblical revelation opens a perspective on contemporary political life that can guide us to the proper fulfillment of our responsibility to live justly with all people.

A.P.J. EDUCATIONAL FUND

Functioning within IRS limits as a tax-exempt educational and research organization, the APJ Education Fund provides service through the analysis of public policy, the publication and distribution of literature on political theory and public affairs, and a regular NEWSLETTER. Tax-deductible gifts are solicited for the Fund which seeks to provide information and perspective on political life from the view point of a Christian philosophy of government and the state.

THE ASSOCIATION FOR

PUBLIC JUSTICE

Working for justice in the public domain.

Guided by the biblical revelation of the restoration of the creation in Jesus Christ, through whom justice is promised to all, especially to the poor and oppressed.

Convinced that good citizenship requires active, principled, and organized political service that is oriented to the entire range of governmental responsibilities.

Box 5769
Washington, D.C. 20014

APJ

REC'D OCT 23 1981

Contact: Joyce R. Campbell
779-2375

STATEMENT

OF

JOYCE RIBBENS CAMPBELL

WASHINGTON COORDINATOR, ASSOCIATION FOR PUBLIC JUSTICE

ON

THE STEELHEAD TROUT PROTECTION ACT

S. 874

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

September 28, 1981

Mr. Chairman and members of the Committee, I am Joyce Campbell, Washington Coordinator of the Association for Public Justice. I am here today to speak on behalf of the Association in opposition to the enactment of S. 874, the Steelhead Trout Protection Act. The Association is an independent citizens organization which is concerned with justice for groups, individuals and institutions in American society. We are citizens who have organized for the express purpose of attempting to implement Christian principles for the establishment of justice in American society.

Not politically organized as fishermen, tribal members, or conservationists, APJ members have no immediate (self-)interest in this bill. Why do we wish to speak to it? Precisely because an issue of justice is involved, and justice is not automatically achieved by interest group conflict. As citizens who are attempting to obey God's demands for the establishment of justice, we do not identify politically with one interest group or another according to our occupation, gender, hobby, investments, ethnic group or other "interest". Rather, we identify ourselves politically as people seeking justice for all, while confessing that we share in the human tendency to seek our own advantage, regardless of the rights of others. Because we are concerned with justice, then, we have an "interest" in S. 874.

One principle of justice which APJ affirms is that government should protect and encourage the full range of cultural life in this country and, in particular, should provide special protection to those minority groups or aspects of culture which may be oppressed or in danger of losing their freedom to develop.

In view of the history of relations between Americans of European descent and Native Americans in this country, it must be recognized that tribal ways of life have been hard-pressed to survive in the face of the majority's dominant culture and way of life.

The responsibility to implement justice in this situation requires governmental protection of the valid rights of the weaker against the political excesses of the stronger. The federal government should recognize this responsibility. In keeping with the longstanding trust relationship between it and tribal governments, it should continue to uphold the treaties it has signed with tribes even when a majority of the regional population might seek to violate or abolish them. Although the Association does not know whether the legislation here under consideration has the support of the majority, we contend that the will of the majority must not take precedence over the doing of justice and the honorable fulfillment of agreements made in good faith. If this were to occur, our political life would illustrate nothing more than a "might makes right" philosophy.

The Association submits this statement, therefore, precisely because the Northwest Indian tribes' right to justice is endangered by the pending legislation. S. 874 would make the laws and regulations of a state prohibiting, restricting, or regulating the taking, possession, transportation or sale of steelhead trout applicable to Indians fishing both within and without their reservations to the same extent such laws apply to other persons. The bill would also authorize Indian tribes to issue licenses and charge fees for steelhead trout fishing on tribal waters.

In addition, S. 874 would make the provisions of the Black Bass Act, which prohibit interstate or foreign commerce in black bass when contrary to state law, applicable to steelhead trout. Finally, the bill would confer jurisdiction to the Court of Claims to adjudicate tribal claims for compensation for the taking of treaty rights.

S. 874 would affect the treaty fishing rights of 21 tribes in Washington state and of four tribes in Washington, Oregon and Idaho whose treaty fishing rights have been adjudicated. Several of the foregoing tribes have judicially upheld rights, under their treaties with the United States, to take one-half of the harvestable fish destined for the usual and accustomed tribal fishing sites. The treaty right includes the right to fish for steelhead trout.

The proposed Steelhead Trout Protection Act would, in effect, abrogate treaty rights which the Congress should not unilaterally annul as a responsible trustee to the tribes. Although the power of Congress with respect to Indian affairs is comprehensive, we agree with the Supreme Court that "the power of Congress over Indian affairs may be of a plenary nature, but it is not absolute." Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977). The proposed legislation is especially unwarranted in view of Congress's recent affirmation of the supremacy of the law and the Constitution in Indian affairs by enactment of the Salmon and Steelhead Enhancement Act of 1980.

The only possible justification for this bill would be a showing by the Northwestern states of a serious threat to the conservation of steelhead trout due to Indian treaty commercial fishing. Such evidence, however, has not been convincingly presented. We point to the testimony of the Sierra Club (which has every reason to support conservation measures) and to the testimony of the tribes themselves that Indian treaty tribes have made a significant contribution to the management and protection of the steelhead trout for the benefit of all citizens. The proposed legislation would actually endanger this valuable enhancement effort because it would turn the entire task of steelhead fisheries management over to state governments, which "do not have an exemplary record in this area". (Sierra Club statement, Seattle Washington, June 29, 1981). Rather than letting one user group decide the fate of the resource according to its priorities, the most just and effective fisheries management would be cooperation among all the parties involved--the states, sports fishermen, and Indian tribes--in protecting both the resource and each other's rights to it.

Finally, we agree with the Bureau of Indian Affairs in holding that enactment of the proposed legislation would lead to "protracted, expensive and complex litigation which could result in a substantial money judgement against the United States". Such problems of litigation and compensation are best prevented by continuing to honor treaty rights. Moreover, the proposed legislation is contrary to the spirit of Congressional intent as embodied in past legislation, such as the Indian Self-Determination and Education Assistance Act of 1974.

In short, we believe S. 874 is unjust, unconstitutional, ecologically unsound, and politically divisive. We respectfully urge the Committee to defeat this bill.

THE RIGHT OF POLITICAL PARTICIPATION: AN AMERICAN INDIAN PERSPECTIVE

by Robert J. Martin

Good morning. It is certainly an honor to speak to such a gathering, and I am very grateful to the Association for it's invitation and interest in Native American affairs. I assume my topic is sufficiently perplexing for many of you. It certainly raises many questions. First, who are the Native Americans? I intend to show that we are more than the bad guys of Hollywood westerns or cigar store curiosities. Second, what is E Pluribus Unum? I hope to demonstrate that this famous American motto has great significance for the future of the United States. Third, how is it that Native Americans have come to challenge this saying which to many American signifies what this country is all about? Fourth, what is the significance of the Native American challenge to E Pluribus Unum? I would suggest that the Native American challenge to E Pluribus Unum, establishes a precedent whereby we can begin to develop a conciousness on several fronts that will strengthen cultural groups, neighborhoods, and families throughout the U.S..

But on to our first question, which is, who are the Native Americans? We are the original inhabitants of this country, sometimes called Indians, although this label has only been with us for some 500 years. We are really several hundred nations or tribes, with names such as Ottawa, Dakota, Shoshone, Cherokee, Makah, Metlakatla, Seneca and Apache. The 1970 census indicates that we number some 827,000 strong, which is roughly 1/2% of the population. Of this number, approximately 310,000 Indians live in metropolitan areas such as New York, Chicago, San Francisco, and Los Angeles. It is now known that 57.7% of Indians live on or near a reservation, which is land held in trust by the Federal government for Indian tribes. Indians live in all fifty states, but the states of Oklahoma, Arizona, California, New Mexico and Alaska contain almost 50% of the total Indian population.

If you have heard or read of the American Indian at all, you must know that we continue to have the lowest incomes, the fewest economic opportunities, the highest mortality rates, the least education, and the worst housing. Specifically, our infant mortality rate after the first month of life is three times the national average. The average life span of an Indian is 44 years, nearly one third short of the national average of 65 years. The yearly average income of the Indian is $1,500, which is half that of the national poverty level. Our dropout rates are twice the national average, and unemployment usually vacillates on most reservations between 50 and 70%. These are grim statistics, but there are other statistics which are making the Indian as equally well known throughout the United States. It is a well grounded fact that Indian reservations contain nearly half of the coal supply of the United States, and nearly 80% of America's uranium resources. Indian tribes as a whole also account for 4.4% of the total United States production in oil and gas. Aside from the major Indian energy resources, there are a variety of other minerals of considerable value on Indian lands. For example, phosphate production on Indian lands was 4.9% of the total U.S. production which amounted to 35.4% on Federal Indian lands. In 1974, 100% of Federal uranium production was on Indian lands. Considerations of time do not permit me to specify the rights tribes have to other natural resources such as water, timber and coastal fisheries. I mention tribal energy resources because I believe that the fate of tribal rights hinges to a great extent on how fairly the U.S. government deals with tribes in the near future. Several tribes feel that the energy crisis will prompt the government to simply seize the resources, an action which would be completely characteristic of government treatment of Indians.

So what do you know about the American Indian so far? You know that Indian is only a general term for several hundred tribal nations, each living separated from the other and possessing a culture, religion and language unique to itself. You know, very generally, how many Indians there are, where they are located, what their living conditions are, as well as the natural resources that will ultimately shape the contours of future relations between tribes and the government.

However, there is an aspect of the American Indian which you must learn today that is paramount to our discussion. This is the special and historical trust relationship which the tribes have with the government of the United States. This trust relationship has been invoked countless times by tribes in their efforts to retain and protect their distinct ways of life, and is of supreme relevance to our discussion today. The importance of this trust relationship will become evident, I assume, after I have answered the second question which guides our discussion; which is, what is E Pluribus Unum?

This latin phrase is translated into English as, "out of many, one." It is the motto which appears on the seal of the United States. This saying is meant to signify what America is all about, it characterizes the great and traditional American dream of "the melting pot." This motto requires us to accept two erroneous, and very dangerous, assuptions. First, it requires us to believe that the millions of immigrants who have come to this country from a variety of distinct cultures and groups simply lost what made them unique in the melting pot process, and subsequently became "American." This notion has become a national creed, we are even subjected to it on the Saturday morning cartoons. I recently was exposed to a childrens learning commercial in which the "great american recipe for the melting pot" was demonstrated. People from every imaginable cultural background and race were thrown into a frothing pot, stirred vigorously, and poured into a soup bowl in the likeness of a red, white, and blue liquid. The second assumption is, of course, that we are asked to believe that this idea of the melting pot is natural, good, and should be carried on.

The melting pot idea would like us to believe that we have a single national culture, that we have developed a species of "homo americanus". This notion is completely fallacious, we have no single culture, at least not a highly developed national culture with a long tradition and intricate symbols, images and ideas. We have only the semblance of uniformity through a single mode of language, dress, and technology. The American idea of the melting pot teaches us that somehow difference is inherently bad, that being seen as different from one another means we are stereotyping, or divesting people of their equal rights. We are trained to be uniques individuals and to distrust or look down upon unique groups of people. The American legal tradition is an excellent example of a fundamental preoccupation with the rights of the individual, the rights of groups have little judicial precedent in this country, except perhaps for the legal status of Indian tribes.

I would like to suggest that an adequate interpretation of E Pluribus Unum, implies that we accept as one of the fundamental purposes of our nation, the fact that we are an exercise in pluralism. That we are an unum, or unity, in which many plures, or differences, can be sustained and nurtured. We must face the fact that Americans are really very different from each other. A viable way of doing politics could be based on this proposition. Our nation might be strengthened by encouraging the organs and institutions of each group in our society.

Therefore, I should like to extend for your approval, two very simple but bold propositions. First, I recommend that we abandon the idea of the melting pot. This is a lie which we should not accept, and we are in deep trouble to the degree we have accepted it. We must realize that there never was a melting pot, there is not now a melting pot, and that there never will be a melting pot. Second, I recommend that we affirm cultural pluralism, or the politics of groups. This kind of politics springs from the idea that each of us should become more profoundly what we are, that in fact, we are more than individuals or members of narrow'interest groups. Cultural pluralism or the politics of groups demands that each'group, and not only outstanding individuals, be given a right to express its own unique values and way of life within the context of political representation. This kind of politics strengthens our unity by encouraging our diversity, it provides for the legislation of multiple ideologies and cultures in which each participating group contributes ideas and methods that are crucial both for governing our country and the maintenance of its national spirit.

Unfortunately, these recommendations remain for the most part, propositions which have never been implemented. The American experiment of E Pluribus Unum, or of reconciling diversity with unity, has resulted only in a strict enforcement of the repressive idea of the melting pot. Assimilation or destruction of difference outside of the context of the individual was, and is, the general rule. Ethnic, linguistic, and religious groups have rarely been accorded legitimacy in this country, and remain to a large extent, curiosities, anachronisms, whose existence depends upon the whims of "the majority." Unfortunately, we have no time to analyze this mystical concept, although I have discovered that it is difficult to fit the diversity that is American into an abstract "majority will" that has complete unity of purpose.

We, the American Indians, have borne the greatest heat of the melting pot, and have suffered the cultural intolerance of the American "majority." It was perhaps, our greatest misfortune that we were conquered by a people intolerant of cultural diversity. Indians looked different, spoke different languages, and had their own unique religions and customs, as well as forms of self-government. For too many years Americans have seen this as anathema and were chagrined when we refused to conform to civilization. This begins to answer our third question, which is, how do Native Americans challenge the motto of E Pluribus Unum? We challenge it because we have never melted into the pot, and because we have never really recognized the legitimacy or reality of the all mighty "majority will." For the most part, tribes have never forsaken their cultural heritage or left undefended their basic rights. But this resistance has been at a great cost to us.

From the time of Columbus almost to the present, an unrelenting campaign of destruction and total assimilation has been carried out against the tribes of this country. Annihilation was attempted at every level, cultural, political and economic. Almost every tribe on the eastern coast of the U.S. was destroyed by wars of conquest, intentional spread of disease, or forced removal campaigns. The westward advance of American "civilization," if we can speak of such a thing, was marked by a continued plundering of native tribes'lands and resources, and the destruction of their peoples. The carnage was not simply of a physical or military character, but was wholesale and thorough. The very ways of life of tribes were laid waste by the elimination of their sustenance resources (buffalo, whale, seal) and the enforced prohibition of their religions, cultures and customs.

However, I do not recite this history to produce feelings of guilt, but rather, to use the past as a backdrop for what we can accomplish in this country to improve the lot of Indians and many other groups. I make no indictments, but I do contend that the experience of the American Indian provides insight into ideas and methods that will help this nation govern its people more justly. But what is it, specifically, that has aided the Indian experience in this country, and that has helped tribes to survive in the face of melting pots and an antagonistic majority? It certainly has been the profound depth and strength of our own cultures, but our survival has also been predicated on a unique legal relationship, a trust relationship, that was developed with the government since the beginning of this country. This trust relationship is based first of all, on the body of treaties negotiated with the Indians by the U.S. government, as well as federal statutes and executive orders. As legal instruments these treaties were not documents of surrender but legal cessions of land in exchange for something else. In exchange for Indians vast holdings of lands, the United States has agreed, in various forms, to small reservations of land for the tribes which include:

(1) resources of land such as water and mineral rights (2) exclusive hunting and fishing rights (3) goods and services to replace the tribal economies that land cessions made unfeasible and (4) exemption from taxation and jurisdiction by the states.

The significance of the trust relationship completes our answer to the third question which guides our discussion, which is, how do Indians challenge E Pluribus Unum? The trust relationship is a legal obligation which the United States bears for Indian tribes that very simply, protects us from being melted in the pot. Of course, this is to speak of the trust relationship in its best light, although it has been violated several times in the past to Indians detriment because government has been negligent in its trust responsibility. To put it positively, the trust relationship between Indians and the government in this country does justice to the american motto of E Pluribus Unum, for it allows its true meaning to blossom. Unity is maintained, but diversity is protected. Interestingly enough, a recent opinion of former Attorney General Griffin Bell, dated June 22, 1979, has stated that "there is no disabling conflict between the performance of these duties to Indians and the obligations of the Federal government to all the people of the nation." One judge, in protecting this relationship, was of the opinion that, "In a mass society, which presses in at every point toward conformity, the protection of a self expression, however unique, of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty."

I will attempt now to tie this all together, as time grows short and I wish to leave a substantial period for questioning. I trust by now you know who the Native Americans or Indians are. I assume also, that you have come to a better understanding of what E Pluribus Unum is. It is not a melting pot, but it is the full realization of diversity within unity, it is the politics of cultural pluralism. I trust also that you now realize that Indians challenge E Pluribus Unum only insofar as it requires them to be what they are not, to put it simply, we oppose the motto only to the extent we are required to lose our cultural identity in a melting pot. Our trust relationship affords a basis of protection against this dangerous idea. I would like to close on our fourth and final question, which is, what is the significance of the Native American challenge to this kind of E Pluribus Unum, the kind that snuffs out diversity in the name of unity? The significance is that many tribal cultures have survived this gross ideas' worst assaults virtually intact, and are growing stronger each day as the trust responsibility is more faithfully carried out. The American Indian has, and is, paving the way for a new politics of cultural pluralism or politics of groups in this country. In this new politics, unity will not be achieved at the expense of diversity, more positively, our national purpose will be structured so as to achieve unity only through the preservation of as many differences or particularities as possible. The goal of our public policy in a pluralistic society would be to sustain as many differences or particular groups as possible, in the hope that most people will accept, discover and devise combinations of particular groups that do public justice. American Indians, however, realized the necessity of such a system long ago, I quote from an old chief of the Southwest:

> You will forgive me if I tell you that my people were Americans for thousands of years before your people were. The question is not how you can Americanize us but how we can Americanize you. We have been working at that for a long time. Sometimes we are discouraged at the results. But we will keep trying. And the first thing we want to teach you is that, in the American way of life, each man has respect for his brothers vision. Because each of us respected his brothers dream, we enjoyed freedom here in America while your people were busy killing and enslaving each other across the water. The relatives you left behind are still trying to kill each other because they have not learned there that freedom is built on my respect for my brothers vision and his respect for mine. We have a hard trail ahead of us in trying to Americanize you and your white brothers. But we are not afraid of hard trails.

We of the Association also have a hard trail to walk in promoting respect for our vision of a just society in which the right of political participation is secured to all through a politics of pluralism. Improving our system through enacting pluralistic legislation which strengthens cultural groups, neighborhoods and families will be an uphill struggle. But this can, will, and must be done, because this country needs it, and because pluralism is right. And above all, we must not be afraid of hard trails.

PUBLIC JUSTICE Newsletter

August-September 1978

NATIVE AMERICANS DESERVE SOMETHING BETTER

WASHINGTON--The Board of the Association for Public Justice has declared its support for Indian opposition to a number of bills now pending before Congress. With the advice of Robert J. Martin, an influential member of the Makah Indian tribe in the State of Washington and a member of PUBLIC JUSTICE, the Board recently released the following resolution which it expects to follow up in the months ahead.

The Rights of Native Americans

> As an association of Christians dedicated to the promotion of public justice, we express our support for the Native American March to Washington D.C. and stand with the native Americans in opposition to the following bills before the U.S. Congress, which would fundamentally change the rights of Indians by a unilateral act of the federal government.
>
> H.R. 9054 Cunningham Bill: Would, in effect, abrogate all treaties between the U.S. and the Indian tribes.
> H.R. 9950 Omnibus Jurisdiction Act: Would end Indian control over Indian reservations.
> H.R. 9951 Meeds Bill: Would end all "aboriginal" water rights on reservations.
>
> Other similar bills include: H.R. 9906; H.R. 9175; H.R. 9736; S.B. 862; S.B. 842; and S.B. 1437.
>
> We oppose these bills because we believe that further discussion of the status of American Indians in the United States is absolutely essential in light of the peculiar character and special nature of their long-standing treaties with the federal government. There is a need for much greater public legal clarification of the rights and identities of groups, especially the native peoples, before any unilateral action by a government can be truly just.
>
> In place of these bills we urge a major combined effort by the Indian tribes, the federal government, and the state governments to clarify for, and demonstrate to, the American public a structure of justice for all groups living within what is now the territory of the United States.

BOARD ADOPTS RESOLUTION CALLING FOR NATIONAL CONFERENCE IN SOUTH AFRICA

WASHINGTON--After more than a year of serious discussions between representatives of the Association for Public Justice and a number of leading South Africans, the Association's national Board adopted the following resolution at its August meeting. The resolution is being sent to the South African Government, to the South African Council of Churches, and to the three major Reformed Church bodies in South Africa.

Being aware of our common Reformed Christian conviction, and

Having listened to persons of South Africa representing blacks and whites (both English-speaking and Afrikaners), and

Having learned of the deep differences in viewpoint among different racial groups in South Africa both within the churches as well as in the society at large, and

Being profoundly concerned that the present deteriorating relations among racial/ethnic groups in South Africa not result in a bloody confrontation, as has happened in certain surrounding nations in Southern Africa, and

Being deeply desirous that justice be done in the South African society among all racial/ehnic groups and among all individuals living in South Africa, and

Being firmly convinced that justice cannot adequately be done for any group(s) except in consultation with such group(s), and that all groups should participate in determining the future course of the country,

We therefore wish to share with you our own profound conviction that a national conference on the future of South Africa ought to be convened in the near future in which the leaders of all racial/ethnic groups will participate, and where the viewpoints and interests of all groups and individuals can be seriously considered.

JUBILEE FOR JUSTICE: A SUBSTANTIAL CONFERENCE

SIOUX CENTER, IOWA--The Second International Christian Political Conference is history. More than twenty speakers from four different countries addressed over two hundred conferees during the four-day conference, August 25-28, held on the campus of Dordt College. The largest gathering of the conference came together on Sunday afternoon to hear radio minister Dr. Joel Nederhood speak on "America's Destiny and the Will of God." Nearly a thousand people attended the inspirational rally in which Dr. Nederhood urged Christians to join together in a political way to pursue justice in America. The Association for Public Justice, he said, is an organization with deep biblical principles that deserves and requires strong support. The idolatrous American civil religion is being challenged in a fundamental way by the Association, and its work must be encouraged if we want to do God's will in our present ailing republic. The work cannot be done by isolated individuals; God calls us as associated co-laborers to work together in the public arena.

Senator Wendell Anderson, Democrat from Minnesota, gave the conference keynote address Friday evening. Christians, he argued, do not have a very good record of solid, dependable participation in American politics. Given their large numbers, they do not come close to the steady, unwavering, and generous service that some smaller groups render year after year. If Christians want public life to change for the better, then they will have to get involved in a way that is not typical of them.

Anderson's challenge was taken up by many speakers during the next days of the conference. Subjects as diverse as environmental protection, international human rights, agricultural justice, Quebec's future in Canada, and many more were explored in seminars and workshops by Christians seeking to discern directions and solutions rooted in a biblical view of life. One European participant remarked that

(continued on insert page 3)

See p. 2

REPORT
PUBLIC JUSTICE

BOX 5769
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Vol. 4, No. 3
December, 1980

editorial comment

CHRISTMAS, THE 97TH CONGRESS, AND PUBLIC JUSTICE

WASHINGTON--In November we citizens elected a new Congress and President. In December we celebrate the coming into this world of the Prince of Peace, the Lord who "loves justice", and the Messiah who came preaching good news to the poor (Is. 9:6; 61:8; Luke 4:18). In January the new President will be inaugurated and the 97th Congress will convene.

The question is: Will these newly elected policy makers act as if they had just welcomed into their world the Prince of Peace, the Lord who loves justice, the Messiah who came with good news for the poor?

We could suggest many reasons why expecting public officials to welcome a person with "such high ideals" is expecting too much in the pragmatic world of politics. After all, isn't the mandate for the new Republican government to restore America's economic strength and number one position in the world--come what may? If so, then it is all the more important that the Association for Public Justice be a constituency which encourages the President and Congress to do justice--to do the job the Lord has called them to do.

Justice pervades a nation when persons, institutions, and communities have room and opportunity to fulfill all their God-given responsibilities. But we should be aware that there are other definitions of justice and other ideas about what the government's task is. For example, many conservatives believe government's job is primarily to protect individual rights and private property. Many liberals believe that the government's job is to do any good thing it can find to do.

APJ should support public policies which enable people and institutions to be response-able, that is, able to respond to their Creator's will for them. It matters little whether such policies come under the name Republican or Democrat or neither.

For example, in the coming years APJ will support policies which:

--enable parents to be more responsible for their children's education and schools to be more responsible for instruction according to the religious commitments of the parents of the students entrusted to them;

--allow native Americans and other minority cultures the freedom and the wherewithal to thrive with greater strength in the face of the values, way of life, and economic power of the majority culture;

--make it easier for all of us to be good stewards of energy, land, minerals, and other creation resources--and make it more difficult for us to waste those resources;

--make it easier for the farmer to be a steward of the land for which he is responsible and make it harder for land to be treated only as a commodity for financial investment by non-farmers and especially non-stewards;

--slow the arms race between the two superpowers, a demon with the potential to make all the other questions moot.

Among the issues facing the 97th Congress that will receive our attention are the following:

1) The 1981 Farm Bill and other farm legislation: Every four years, a major Food and Agriculture bill is enacted into law by Congress, and 1981 is one of those years. This comprehensive bill will renew and initiate programs in virtually every area of agriculture, including commodity programs, price supports, research and extension, credit and loan programs, foreign and domestic food assistance, disaster assistance, and grain reserves. APJ will be addressing this bill and others with an eye toward their effects on the good stewardship of agricultural land, the preservation of small to medium sized, owner-operated farms, and the supply of food for people.

2) Tuition Tax Credit: While campaigning, President-elect Reagan was outspoken in his support of tuition tax credit legislation, and doubtless his administration, with the support of those in Congress who previously sponsored the bill, will introduce this legislation in the 97th Congress. Although APJ believes that justice for education will require many other changes --especially at the state level--we supported tuition tax credit in 1978 as a small step toward greater equity for all taxpayers who are required to support the public funding of education. We expect to support such legislation again. (See the APJ position paper, "Justice for Education.")

3) Arms Control: Since the 96th Congress failed to ratify the SALT II Treaty, the new Congress and the President have three choices: 1) to ratify SALT II; 2) to speed up an unregulated arms race with the goal of regaining or maintaining (depending on your analysis) strategic superiority over the Soviet Union, no matter how much it costs the U.S. and the rest of the world; 3) to begin new negotiations with the Soviets for a SALT III treaty--one that would, we can hope, seriously slow and eventually halt the arms race, rather than allow each nation to continue building its next generation of weapons, as the SALT II

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(continued on insert page 3)

treaty allows. APJ will support efforts to encourage a new treaty whether or not SALT II is ratified.

What should concern us most this Christmas is not whether Republicans or Democrats will have greater influence in Congress next year, but whether the laws and policies of our country will give honor to the Prince of Peace, the Lord who loves justice, the Messiah who came with good news for the poor.

-Joyce Ribbens Campbell

CHRISTIAN ECONOMISTS DISCUSS GROWTH, JUSTICE, AND THE BIBLE

LOS ANGELES--"International Economics and the Bible: A Dialogue" was the title of an unusual conference held here at the Bel Air Presbyterian Church, October 23-27. Together with Fuller Theological Seminary and Evangelicals for Social Action (ESA) the Bel Air Church called together about 20 economists, business people, and theologians to discuss the meaning of the Bible for contemporary economic life.

PUBLIC JUSTICE REPORT Editor, James Skillen, was among the participants who responded to papers presented by Brian Griffiths, a British professor of banking and international finance at the City University of London, and George Monsma, an economics professor at Calvin College. Among the other participants were Ronald J. Sider, President of ESA; Melvin Loewen, Technical Assistance Officer at the World Bank; Bob Goudzwaard, economics professor at the Free University of Amsterdam, Holland; businessmen Max De Pree (Chairman of the Board of Herman Miller, Inc.) and Jan Erteszek (Chairman of the Board of the Olga Company); Norman Ewert, economics professor at Wheaton College; Lewis Smedes, professor of theology and ethics at Fuller; and the conference coordinator Frank Alton, a pastor at Bel Air.

As the Los Angeles Times commented later (November 3), all the participants agreed that "men and women are, in the long run, only trustees over God's creation," and "that the Bible places a great burden on affluent Christians to aid the poor." But little by way of a final consensus emerged over the weekend.

Brian Griffiths laid stress on the importance of "creating wealth" in the contemporary world. Having become disillusioned with British socialism after years in its orbit, Griffiths is convinced that the socialist myth of equality must be dismissed. Economic equality, whether among individuals or among countries, is not a legitimate goal of government policies, he argued. While Christians must seek every opportunity to give freely to the poor, and while the government does have some responsibility to fight absolute poverty, we must reject the false hope that there is a just means by which governments can redistribute wealth to obtain equality.

George Monsma, by contrast, wondered whether the whole idea of the perpetual creation of wealth is anything more than a false idol leading people away from a concern for true justice. Justice, not growth, should be the overarching concern of economic institutions and policies, according to Monsma. If the socialist ideal of complete economic equality is a false hope that can lead to injustice, so the liberal/conservative ideal of economic freedom and growing prosperity can perpetuate injustice that is condemned by the Bible.

With respect to international economic conditions and relations Monsma argued that, "If the problems of injustice in the international economic order are to be solved, people will have to broaden their concerns and actions for others from the relatively narrow areas in which they are exercised at present (be that family, ethnic or religious group, or nation) to concerns and actions for all mankind, regardless of racial, ethnic, religious, or national boundaries. . . . Who but Christians, with the all-encompassing love of Christ as their model and source of power, can take the lead in this? Structurally this means that we cannot make an idol of our nation-states and their sovereignty, but must be willing to give up elements of sovereignty when that is needed to achieve more justice; more and more resources must be treated as a 'common heritage of mankind', rather than exploited for narrow personal or national ends. . . . This is consistent with the Christian idea that man is a steward of God's resources, not an absolute owner of them, and in this stewardship the needs of others must always receive major consideration."

Serious discusison of economic life from a biblical point of view was just begun, but all the participants were extremely grateful for that beginning of talk and work together. Further cooperation is being planned for the future, with the possibility that some publications might appear and other gatherings might be organized. Beyond the cooperative efforts of economists and business people, Sider and Skillen agreed to seek avenues of closer cooperation between ESA and APJ. The responsibility of Christians to clarify the character of a biblical approach to political and economic life is especially great at this point in U.S. history when so many questions are being asked by Christians and when so many different kinds of action are being taken in the name of Christianity.

Among recent books, articles, and papers on economics and the Bible that were called to the attention of conference participants, the following appear to be especially valuable.

John H. Boer, "Biblical Quotations on Justice, Stewardship and Economics," (a paper available from the Association for the Advancement of Christian Scholarship, 229 College St., Toronto, Ontario, Canada M5T 1R4).

Bob Goudzwaard, *Capitalism and Progress* (Grand Rapids: Eerdmans, 1979).

Bob Goudzwaard, "Norms for the International Economic Order," and George Monsma, "Strategies for Improving the International Economic Order," both in *Justice in the International Economic Order* (Grand Rapids: Calvin College, 1980).

Jack Nelson, *Hunger for Justice: The Politics of Food and Faith* (Maryknoll, NY: Orbis Books, 1980).

Ronald J. Sider, ed., *Cry Justice: The Bible on Hunger and Poverty* (New York: Paulist Press; and Grand Rapids: Eerdmans, 1980).

Ronald J. Sider, ed., *Living More Simply* (Downers Grove, IL: InterVarsity Press, 1980); see especially George Monsma's article, "The Socio-Economic-Political Order and Our Lifestyles."

CANADIAN CJL CHALLENGES GOVERNMENT'S ENERGY PLAN

TORONTO--While the U.S. government and some major American oil companies are becoming uncomfortable over the Canadian government's plans to take greater control of foreign oil operations in Canada, the Committee for Justice and Liberty (CJL) is going to bat for the Dene Indian Nation in Canada's Northwest Territories against the Canadian government in order to promote policies of justice for minority cultures and greater stewardship of Canadian resources. The two lines of

(continued on folder page 5)

attack on Canada's federal government, and that government's response, show significantly different concerns about what is good for people and resources.

American government and oil industry officials are troubled primarily by the fact that the Trudeau Government appears willing to interfere in the "free enterprise" of corporations in Canada. Twelve U.S. multinationals operate in Canada and account for 50 percent of its oil and gas production. If the Canadian government proceeds with its plans to promote majority Canadian ownership (both public and private) of all oil and gas production within its borders, the American companies will obviously lose control of, and profits from, valuable operations there.

The Canadian government's reasoning follows from the pledge made earlier this year by Prime Minister Trudeau during his reelection campaign, that he would seek an end to the domination of foreign oil corporations. U.S. multinationals have, for the past five or six years, been exporting capital from Canada rather than importing it. Much of the profit from Canadian oil and gas is going to foreign shareholders. That pattern cannot continue, say the Canadians, because it is not in the interest of Canadian citizens and industries.

While it would appear that the Trudeau Government is looking after the welfare of its citizens, the CJL is arguing that the National Energy Board of Canada is taking a far too narrow and selective approach to the questions of "Who are the Canadians" and "What are their real interests."

Speaking here recently with CJL's Public Affairs Director, Gerald Vandezande, Editor Skillen obtained the following details about CJL's actions.

CJL testified before Canada's National Energy Board (NEB) which was holding hearings in October and November on an application by Imperial Oil Ltd. to build an oil pipeline from Norman Wells in the Northwest Territories down the Mackenzie Valley and into Alberta. The likelihood that the NEB would grant the request was due to its receptivity to arguments about the need for more oil for domestic consumption in the Southern part of the country where most of the population resides.

But how important would that additional oil be? The CJL said that the new project would supply only about one percent of Canada's oil needs. A better program of conservation and the use of alternate energy sources could easily supply that amount.

More important than the stewardship of resources, however, is justice for the Dene Nation and other native peoples in the North. At the present time negotiations are under way between the Government and the native people in the Northwest Territories over land and resource claims. The proposed pipeline project would cut right through land that is in dispute and would obviously jeopardize the claims of the native people. If the NEB would approve the project, it would be saying that the desire of the majority of Canadians in the South for an additional one percent of oil is more important than the much broader life and culture rights of a small percent of Canada's population in the North. That is unjust, according to CJL. The Government must take a broader look at the needs of all people. Basic rights of the native people should not be sacrificed for the mere convenience of the majority of Canadians.

CJL contends that the NEB has always taken a narrow view of "public interest and necessity", and has assumed that any project which was financially and technically feasible and brought new energy onstream should automatically be approved." CJL believes that the "public interest and necessity" should be interpreted in the light of values such as the stewardship and conservation of resources, the quality of lifestyle, social justice, caring and sharing. "We must put an end to treating the rights of people as secondary concerns, as problems to be mitigated while projects decided on technical and financial grounds are built."

Before we Americans get too upset over Canada's decision to "Canadianize" its oil and gas resources, we had better ask about the consequences of our own government's plans for synfuel and oil shale production in the West where native rights and environmental stability might be negatively affected. How badly do we need that new energy? What are our public priorities? Whose rights should come first?

REGULATION OR DEREGULATION OF TELEVISION

WASHINGTON--"The old TV is over! The old TV is over!" That is the news being shouted around the country today, according to Arthur Unger, television critic of the CHRISTIAN SCIENCE MONITOR. Whether it is Unger's special series on "Tomorrow's TV" (which appeared in the CSM in late October and early November), or special news programs being aired on TV itself, the great debate today is about the new technologies (satellite broadcasting, Cable TV) and the new politics (deregulation or new regulations) which are changing the meaning of television.

Cable TV companies are scrambling to gain franchises in cities all across the country. Public Broadcasting is suffering from lack of increased funding. The communications industry is squirming under the outdated, decades-old federal Communications Act. Most of the big leaders in government and industry are calling for deregulation of TV and radio.

But deregulation of the TV market might not mean a real opening of access to broadcasting; it might not mean greater diversity or improved quality of programming. Samuel Simon, Executive Director of the National Citizens Council for Broadcasting (NCCB) says: "As to deregulation--our job is to empower citizen choice, and we certainly don't think the marketplace gives it. And I also think there is a marketplace of ideas, apart from the economic marketplace, which so few people in government or in broadcasting today want to consider seriously." (Unger, CSM, Nov.7, 1980, p. 13)

Simon and others are calling attention to the fact that the domination of TV by companies that now have the ability to invest and produce, even if there are many such companies, will not necessarily give the "consumer" access to the means of broadcasting.

Justice for broadcasting, we would suggest, must take into consideration the real character and purpose of public communication of all kinds. Public officials must think of more than producers and consumers of an expensive commodity. The public is not just a mass of program consumers, but a wide diversity of groups with a wide variety of contributions to make through public communication. Let's search for justice for all dimensions of broadcasting--for all!

The PUBLIC JUSTICE REPORT is published 10 times a year by the Association for Public Justice Education Fund, Box 5769, Washington, D.C. 20014. For further information about the REPORT or the Fund, address your inquiry to the address above. The APJ Education Fund is a non-profit, tax-exempt organization, committed to education and research that will aid the development of a biblical understanding of public policy and political service. Tax-deductible donations for the support of the REPORT and other projects of the Fund are warmly appreciated. Letters are welcomed, and the Editor reserves the right to publish all or part of each letter in the REPORT.

INLAND EMPIRE
BIG GAME COUNCIL

ARTHUR SOLOMON, JR., Executive Director

September 16, 1981

REC'D SEP 7 1981

Senator William Cohen, Chairman
Select Committee on Indian Affairs
1251 Dirksen Senate Office Bldg.
Washington, DC 20510

Re: Statement to be included as part of the official hearing, S. 874 on September 16, 1981.

Mr. Chairman and Members of the Select Committee on Indian Affairs:

My name is Arthur Solomon, Jr. I am the Executive Director of the Inland Empire Big Game Council, a wildlife organization whose home office is located in Spokane, Washington.

Our organization, representing some 2,700 anglers, hunters and wildlife recreationists, strongly endorses S. 874 and urges the Committee to actively pursue this bill to a successful conclusion through the 97th Congress.

The Steelhead Trout Protection Act (S. 874) is vital if we are to sustain this resource for the future generations that shall follow in our footsteps.

Section 2, Item 2, states; The value of Steelhead Trout to the economy as a game fish is substantially greater than its value as a Commercial fish—a most accurate statement. The "Economics of Wildlife" for the State of Washington unmistakably values the sports fishing for Steelhead Trout during the calendar year of 1980 at $16,450,000. With the respending multiplier added to this, we can establish the sports fishing harvest for Steelhead at a value to the State's economy at 21.5 million dollars, far in excess of the commercial value based on the average annual catch of Steelhead by Indian fishermen. The method of developing the dollar figures used in the prior sentence have been coordinated through the Office of Financial Management for the State of Washington.

In the State of Washington, the management agency for the Steelhead Trout is the Washington State Department of Game. This Department is not a General Fund Department, but receives its financial support from two basic sources, the anglers and hunters who purchase licenses, tags, permits, etc., and from funds provided by the Federal Government through a variety of laws and grants that provide for this through enabling legislation. Management of the Steelhead Trout is costing the State sportsmen and the Federal taxpayers more than is

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reasonable as a result of Federal Court decisions allowing an Indian fishery for commercial purposes. It is most "cost ineffective" and makes very little common sense. The license buyer and taxpayer is subsidizing the Indian fishery.

If the Steelhead Trout were necessary to provide subsistence for the Treaty Tribes, one might be able to reconcile this continued harvest. This is not the case. Modern fishing methods, which could not have been taken into account when Indian treaties were signed, are leading to the destruction of this resource. Stocks of wild fish are approaching extinction.

Hatchery planted Steelhead in waters affected by the Boldt Decision will not be able to keep pace with the Indian commercial fishery concept. I doubt that the numbers of Steelhead Trout used for ceremonial purposes would have any impact on the resource and we have no objection to this type of fishery, if it is not abused.

We are confident that if the bill is passed as written, it will adequately compensate the Treaty Indians. We believe passage of this bill will be fair and just for all. It will remove the pressures that now exist between the Treaty Indians and the sportsmen and most importantly, S. 874 can save the resource.

We ask for your support in passage of this bill.

Respectfully submitted,

Arthur Solomon, Jr.
Executive Director

ASJ/ps

cc: All members of the Select Committee on Indian Affairs
Senator Henry M. Jackson - Washington
Senator James A. McClure - Idaho
Senator Steve Symms - Idaho
Congressman Tom Foley - Washington
Frank Lockard, Director - Washington State Dept. of Game
Rollie Schmitten, Director - Washington State Dept. of Fisheries

INLAND EMPIRE
BIG GAME COUNCIL
ARTHUR SOLOMON, JR., Executive Director

November 2, 1981

Senator William Cohen, Chairman
Select Committee on Indian Affairs
1251 Dirkson Senate Office Bldg.
Washington, DC 20510

Dear Senator Cohen:

Enclosed are petitions with 79 signatures supporting S. 874.

We conducted no great work effort to get them and although the number is small, they represent a signature collection from both Western and Eastern Washington which took less than two hours actual time.

The Anadromous fish issue is a very volatile one in the Northwest. Both Salmon and Steelhead are in need of Federal Government support and protection.

I hope you and your Committee will look favorably upon S. 874.

Sincerely,

Arthur Solomon, Jr.
Executive Director

ASJ/pa

Enc: S. 874 Supporting Petitions

cc: All members of Select Committee on Indian Affairs

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INLAND EMPIRE
BIG GAME COUNCIL

ARTHUR SOLOMON, JR., Executive Director

To the Select Committee on Indian Affairs
Senator William Cohen, Chairman

We the Sportsmen of the Pacific Northwest would like to show our support for S. 874 (The Decommercialization of Steelhead). We urge you to support this bill.

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5.	Wil Jones	[illegible]31 N [illegible]	9-1-81	Wil Jones
6.	Rick [illegible]	W 1211-34th	9-1-81	
7.	Doug Smith	W 3321 Dalke Spokane	9-1-81	
8.	Dennis Adey	1701 E Decatur Spokane	9/1/81	Dennis Adey
9.	LOUIS HYATT	W. 3920 Hoffman "	9-1-81	Louis Hyatt
10.	H E STIMSON	18[illegible] E 34 ✓	—	H R Stimson
11.	Al Evans	5227 W Cannon Sp	9-1-81	
12.	WILLIAM C RINK	N 11213 EVANHOE RD	9-1-81	William C Rink
13.	KAREN FLANIGAN	PO BOX 128 DEERPARK	9-1-81	Karen Flanigan
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7.	Lawrence Peterson	2331 W Lacrosse	9 1 81	
8.	[illegible]	[illegible] Hiawatha	[illegible]	[illegible]
9.	[illegible]	[illegible]	[illegible]	[illegible]
10.	Michael Kaszycki	W. 2931 FRANCIS	9-1-81	Michael Kaszycki
11.	Ralph T. Harsh	E 1801 Rockwood	9-1-81	Ralph T. Harsh
12.	Elmer S. Harris	E 1602 Heroy	9-1-81	Elmer S Harris
13.	Randolph E Nolte	E 818 Mission, Spokane	9-1-81	Randolph E Nolte
14.	Gina M. Nolte	E. 818 Mission Spokane	9-1-81	Gina M Nolte
15.	LEO F. YOUNG	N 6908 G ST SPOKANE	9-1-81	Leo F. Young

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1.	Larry A Coe	W2225 Gardner	9/1/81	L A Coe
2.	[illegible]	5635 E Commerce	9/1/81	
3.	Doug Naccarato	RT 1 Box 305F	9-1-81	Doug Naccarato
4.	ARTHUR O LEYDE	N10210 IVANHOE	9-1-81	Arthur O Leyde
5.	Joseph J Graham	N2820 Sm. 7th	9/1/81	Joseph J Graham
6.	Margaret E. Cole	E 1711 Columbia	9/1/81	Margaret E. Cole
7.	Bonnie Kohler	4003 N. Warwood	9/1/81	Bonnie Kohler
8.	Hank Kohler	" "	"	Hank Kohler
9.	Robert E. Stanley	N. 9627 Arrowhead	9-1-81	Robert E Stanley
10.	George H. [illegible]	E24217 [illegible] Wash.	9/1/81	George H [illegible]
11.	Max D Shiell	4321 E. Francis	9/1/81	Max Shiell
12.	Michael P Crook	E21079 [illegible] (Otis orch)	9-1-81	Michael P Crook
13.	Charlene Carey	E. 9524 Boone	9-1-81	Charlene R Carey
14.	Ray W. Stark	116 [illegible]	9-1-81	Ray W. Stark
15.	Larry G Frederick	N4519 Washington #20	9-1-81	

INLAND EMPIRE
BIG GAME COUNCIL

ARTHUR SOLOMON JR. Executive Director

To the Select Committee on Indian Affairs
Senator William Cohen, Chairman

We the Sportsmen of the Pacific Northwest would like to show our support for S. 874 (The Decommercialization of Steelhead). We urge you to support this bill.

	NAME (Printed)	ADDRESS	DATE	SIGNATURE
1.	Jeri Fawver	MP 2.4 R Wash R. Rd	9/5/81	Jeri Fawver
2.	RM MORSEN	MP 0.23R MATHEWS Rd	9/5/81	
3.	C. Hopkins	M.P. 2.52R [illegible] River Rd	9/6/81	Cecil Hopkins
4.	Terri Jones	[illegible]	9-6-81	Terri Jones
5.	Marcus L Faller	M.P. 7.84L Hwy 140 [illegible]	9/6/81	Marcus L Faller
6.	[illegible]	M.P. 2.14 L LaBarre Rd	9-6-81	
7.	DAN ROSENQUIST Dan Rosenquist	MP 9.79L Hwy 140	9/7/81	Dan Rosenquist
8.	Evelyn Rosenquist	MP 9.79L Hwy 140	9/7/81	Evelyn Rosenquist
9.	Robert Whitaker	MP 0.20R Mathews Rd	9-7-81	Robert Whitaker
10.	Susan McCaslin	MP 0.20 R Matthews Rd	9/7/81	Susan McCasley
11.	~~Larry~~ Larry R. Short	MP 0.18 R Hembree' Rd	9/7/81	Larry R Short
12.	Terry J. Short	MP 0.18R Hembree' Rd	9/7/81	Terry J. Short
13.	Donald T. WEIR	36-505 NE Washougal Rd	9/7/81	Donald T. Weir
14.	D. Brent [illegible]	MP 1.43R Washougal Riv Rd	9/7/81	D. Brent [illegible]
15.	Clyde Edwards	MP 0.8L [illegible] Cr. Rd	9-8-81	Clyde Edwards
16	DAN P. PATTON	MP 0.57L Butler Loop	9-20-81	Dan P. Patton
17.	Ray Hamilton	P.O Box 80 STEV.	9-20-81	Ray Hamilton

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INLAND EMPIRE
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To the Select Committee on Indian Affairs
Senator William Cohen, Chairman

We the Sportsmen of the Pacific Northwest would like to show our support for S. 874 (The Decommercialization of Steelhead). We urge you to support this bill.

	NAME (Printed)	ADDRESS	DATE	SIGNATURE
1.	Jim Johnson	MP1.71L W R RD	9/8/81	
2.	John K Ziegler	30610 NE WYLIE Rd [illegible]	9/8/81	John K Ziegler
3.	Norm Ferguson	MP0.13R Stabler Way Washougal	9/8/81	Norm D. Ferguson
4.	George Dugan	MP. 2.23 R Skye Rd	9-20-81	George Dugan
5.	Dawn A Dugan	MP 2.23 R Skye Rd	9/20/81	Dawn A Dugan
6.	Dale Shoemaker	MP 2.5 E R Washougal	9/21/81	
7.	JOHN POMEROY	MP 2.4R N Fork Rd Washougal	10/26/81	
8.	Scott Ruskey	MP 0.27R Steelhead Rd	10/25/81	
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INLAND EMPIRE
BIG GAME COUNCIL
ARTHUR SOLOMON, JR., Executive Director

To the Select Committee on Indian Affairs
Senator William Cohen, Chairman

We the Sportsmen of the Pacific Northwest would like to show our support for S. 874 (The Decommercialization of Steelhead). We urge you to support this bill.

	NAME (Printed)	ADDRESS	DATE	SIGNATURE
1.	LOREN K. MORSE	W 2428 LIBERTY AV SPOKANE 99205	9/1/81	
2.	Willits C. DeArmond	N 5003 CANNON St SPOKANE 99208	9/1/81	
3.	NORMAN H. GUNNING	N 5014 BELT ST.	9-1-81	N. H. Gunning
4.	Ross L. McClung	W 1215 16TH AVE Spokane 99203	9-1-81	
5.	Marvin L Hamilton	N 5819 Fleming, Spokane 99208	9/1/81	
6.	JAMES A. ROBINSON	N 7721 CAMPBELL RD Otis Orchards	9/1/81	
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INLAND EMPIRE
BIG GAME COUNCIL

ARTHUR SOLOMON, JR., Executive Director

To the Select Committee on Indian Affairs
Senator William Cohen, Chairman

We the Sportsmen of the Pacific Northwest would like to show our support for S. 874 (The Decommercialization of Steelhead). We urge you to support this bill.

	NAME (Printed)	ADDRESS	DATE	SIGNATURE
1.	Larry A Barnes	1809 N McKee Ct	9/1/81	
2.	Cayle F. BARNES	1809 N. McKee Ct.	9-1-81	
3.	TEDFORD C. HARTMAN	2017 E 14 SPOKANE	9-1-81	Tedford C Hartman
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INLAND EMPIRE
BIG GAME COUNCIL
ARTHUR SOLOMON, JR., Executive Director

RECEIVED
SEP 10 1981
Senator Slade Gorton
Spokane

MEMO

TO: Senator Slade Gorton

FROM: Arthur Solomon, Jr., Executive Director

DATE: September 9, 1981

SUBJECT: Newspaper article relative to S. 874.

I suggest that the enclosed article be submitted as part of the formal testimony during the Senate hearing to be held September 16, 1981 on S.874.

The content of the article is persuasive and accurate concerning the sports fishermen's attitude to the entire subject matter.

The final column states some, but not all of the pending disasters that are occuring as a result of the Indian fishery of Steelhead.

ASJ/ps

Enc: Article on Steelhead Angler Ruling

POST OFFICE BOX 3286 • N. 401 HELENA • SPOKANE, WASHINGTON 99220 / TELEPHONES: (509) 535-1503 • 534-4005

Indian fishing rights

Ruling may hurt steelhead anglers

By FENTON ROSKELLEY
Chronicle Outdoor Editor

Fish and Game

It's no wonder federal judges are losing the confidence of thousands of Northwest residents, particularly sportsmen.

Another decision by a federal judge a few days ago could, in the opinion of fisheries experts, cost eastern Washington and northern Idaho residents a valuable steelhead run.

U.S. District Judge Walter Craig ignored recommendations by state fisheries officials.

The judge gave Columbia River Indian treaty tribes commercial salmon and steelhead fishing privileges from today through Thursday in the 130-mile stretch of the river between Bonneville and McNary dams and in the Bonneville pool, above the dam, from Sept. 7 through 11. An additional season, from Sept. 14 to 16, will depend on Indian fish biologists' estimates of the salmon available between Bonneville and McNary.

Jack Ayerst, the Game Department's fisheries division chief, pointed out that the "A" group steelhead are now present in high numbers in the pools above the river's lower three dams. As of Aug. 24, 112,390 steelhead had passed over Bonneville, 71,358 had climbed The Dalles fish ladders and 37,680 had gone over John Day Dam.

Ayerst said the Indians' second season (Sept. 7-11 in the Bonneville pool) will come at the peak of the "B" group steelhead run. The run has peaked historically around the week of Sept. 7.

Steelhead that manage to escape the nets during the previous seasons will be dispersed throughout the lower three pools by the time the optional third season would take place. No sportsman expects the Indians not to set a season.

Fish present at the time will be mostly "B" group fish, and, Ayerst said, that run is already in an extremely depleted state even without the additional pressure of commercial netting.

"This added blow to the B group run," Ayerst said, "could be the one that tells whether these valuable fish will continue to provide opportunities for sports angling in future years."

Like many federal judges before him, Judge Craig acted as a lawmaker, not an interpreter of the law. His kind of decisions are what is irritating the American people.

At least, Judge George Boldt, the man who decided that certain Indian tribes on the Coast are entitled to 50 percent of the fish, directed state agencies to set up programs to divide the fish. State fisheries officials say that Craig wouldn't consider their reasons why the Indians should be denied a commercial fishing season on the lower Columbia.

Eastern Washington and northern Idaho anglers have been looking forward to good steelhead fishing this fall for the first time in years. Fisheries biologists have been telling them that they can expect a good run up the Snake River system. In fact, the Washington Game Commission recently authorized a catch-and-keep steelhead season on the lower Snake River, starting today.

The Idaho Fish and Game Commission later this week likely will set seasons for the Snake and Salmon rivers. In view of Craig's decision, the commission may not authorize a catch-and-keep seasons for the Clearwater River.

The B group of steelhead, the one that is in trouble, moves into the Clearwater each fall. If the Indians catch large numbers of the B group, the Clearwater run almost certainly will be in jeopardy.

It's obvious that federal judges are more likely to listen to Indian tribes than state agencies and steelhead fishermen in the future. As the result of decisions by the federal judges, scores of charter boat operators on the Coast are going bankrupt and sports fishing steelhead has deteriorated in coastal streams.

Now it looks as though inland steelhead fishermen will watch the steelhead runs disappear as the result of decisions by a federal judge.

Chronicle
Outdoors

Sept. 1, 1981.   19

230 Mt. Rainier Pl. NW
Issaquah WA 98027
September 25, 1981

Senate Select Committee
on Indian Affairs
U.S. Senate
Russell Senate Office Bldg.
Washington D.C. 20510

Dear Honorable Senators of the Committee:

I appreciate the opportunity to have my views on the Steelhead Trout Protection Act entered into the record and made part of your Committee's consideration on this important legislation. I encourage your support for this bill as essential for the long term protection of this great sports fish, and for the following reasons:

1. Indian gill-netting is literally wiping out the once great runs of steelhead. The Skagit River which used to produce in excess of 20,000 sports caught steelhead annually produces less than 5,000 fish annually today. Three separate Indian tribes net the river on a 24 hour a day basis. Last year the Tulalip Indians harvested 6000 steelhead from the Snohomish River before the sportsman had taken a 1,000. There weren't enough fish left for the sportsmen to harvest their share and allow for proper escapement. I believe the efficiency of the gill-net method of harvest is directly responsible for the decline in the steelhead resource.

2. At the time the treaties were written in the 1850's who could have envisioned nylon gill-nets choking the mouths of western Washington rivers powered by modern diesel engines and fiberglass boats. The courts have failed to apply a consistent interpretation to usual and accustomed fishing gear as they have to usual and accustomed waters. I submit the treaty writers intended for the method of harvest to remain spears, dipnets and dugout canoes.

3. Less than 100,000 adult winter steelhead return to designated Indian treaty rivers and streams. These fish are not plentiful like salmon and can not support a commercial fishery. Must their numbers decline the way of the Atlantic salmon before we wake up and eliminate their destruction b commercial nets?

4. The Indian commercial fishery is not helping the living standard of tribal members. Profits from the commercial

sale of steelhead are not shared with the tribal community--rather they enrich a select few tribal fisherman. No Indian achieves a "moderate living" standard as called for in the Boldt decision. A few are wealthy--most live in squalor.

5. The Indian gill-net fishery provides no opportunity to selectively harvest and manage for wild and native stocks. The gill-net does not descriminate between hatchery and native fish, it catches both. Only the small, undersized fish of hatchery origin slip through the nets. These fish are then the ones that must provide for future years returns--a guaranteed program to insure smaller and less hardy fish, year after year. Studies now show that native fish, indigenous to Northwest rivers, provide the best opportunity to enhance the steelhead resource. Continued gill-net fishing will make such a program in Washington next to impossible.

6. Indian financed steelhead enhancement programs on Puget Sound rivers are essentially non-existent. Propagation of the steelhead is funded through sportsmen license fees. Indians get a "free lunch" in an era when no other government programs are being spared budget trimming and/or elimination.

7. Indian harvest of steelhead on Puget Sound rivers has never been part of or essential to the Indian people. Some historians note that steelhead incidentally caught during tribal salmon fishing were fed to the dogs as scrap fish. The Boldt decision has provided the tribes with a windfall profit in the steelhead fishery. If the tribes must continue fishing for these fish I believe a windfall profits tax should be levied to return some of these profits for the enhancement of the resource.

8. The Indian commercial fishery is glutted with federal support and monies that are little more than a welfare program. State management of the steelhead resource is constantly challenged by tribal attorneys and federally financed bureaucrats. The result is fewer and fewer funds for steelhead management and enhancement. If federal hand out programs through the Bureau of Indian Affairs and Northwest Indian Fisheries Commission were eliminated the tribes might be more inclined to cooperate and abide by State regulations. I recommend these programs be eliminated in the next round of Congressional belt tightening as unnecessary and something the tribes should be financing from their fishing revenues.

9. Who is an Indian and who can legally fish for steelhead as a tribal member? A full blooded Indian? Half blood? One quarter? A non-Indian with an Indian spouse? A non-Indian on an Indian boat? Even the tribes don't know or do they care to specify. Keeping their membership an unknown frustrates any attempts by the State to manage their fishery.

10. The Indians argue they have a special cultural closeness to fish and wildlife resources that others don't possess. This closeness they say is a guarantee the treaty fishery will not exploit the steelhead resource for the economic benefit of a few tribal members. I submit that this is not the case and enclose an article on the Indian "closeness" to the great American bald eagle taken from a recent issue of the Seattle Times (September 22).

Finally I would ask as you consider this legislation that you stop for a moment and reflect on your favorite recreational pastime. While you're thinking about that pastime, think also of how you'd react if you knew that a priviledged few Americans had court interpreted powers to eliminate your pastime and they were exercising those powers without regard to your concerns. Senators, this is exactly what is occurring to the thousands of sportsmen who fish for steelhead. In a few short years these great fish will be gone and we will all be the loser. I implore you to act favorably on the Steelhead Trout Protection Act so that day never comes.

Sincerely,

David G. Clark

David G. Clark

Enclosure

C 2 — The Seattle Times — Tuesday, September 22, 1981

4 Lummi Indians plead guilty to federal bald-eagle charges

by Eric Pryne
Times staff reporter

Four members of the Lummi Indian Tribe yesterday pleaded guilty in federal court here to charges of trafficking in bald eagles and other federally protected birds.

Federal officials said three of the four hunted the endangered national birds, and one told a federal undercover agent last July that he had shot 30 eagles this year.

Two Bellingham women charged in the same indictment as the four Lummis also admitted in court their roles in the eagle-trafficking operation on the Lummi Reservation near Bellingham. Assistant United States Attorney Richard C. Tallman said the two — Celita Friera, 33, and her mother, Dolores A. Mackie, 53 — were "the principal figures in the conspiracy."

But Ms. Friera and Ms. Mackie didn't plead guilty. Their lawyers said they will admit to the facts in the case, but want to retain the right to appeal the government's authority to prosecute them on felony and misdemeanor charges.

Attorneys for all sides presume United States District Judge Richard Bilby, visiting from Arizona, will find the two women guilty when he again takes up the case Thursday morning.

Ms. Friera, Ms. Mackie and the four Lummis were among 21 persons indicted in July by a federal grand jury after a year-long undercover investigation into the illegal bald-eagle trade by the United States Fish & Wildlife Service.

All 21 were charged with violating the Migratory Bird Treaty Act, a felony, and the Bald Eagle Protection Act, a misdemeanor. Most also were charged with conspiracy.

Yesterday was to have been the first day of the trial of Ms. Mackie; Ms. Friera; Darryl George Scarborough; his nephew and niece, James H Scarborough, Jr., and Rhonda Leann Scarborough Russell James Olsen and David Leland Johnson.

Altogether, the seven were charged with possessing, selling or bartering eight whole bald eagles, at least 129 bald-eagle feathers and assorted other protected birds and bird parts between October, 1980, and July, 1981.

All seven pleaded not guilty at earlier arraignments. That changed yesterday after Judge Bilby denied a defense motion to try the defendants only on the misdemeanor charges.

Ms. Friera's attorney, Michael Frost, told the judge his client admitted her part in the eagle-trafficking operation. "Ms. Friera certainly does not contest the fact that she was involved in some activity that was inappropriate," he said.

But Frost said his client might choose to appeal Judge Bilby's ruling on the appropriateness of the felony charge and suggested the court accept a no-contest plea to preserve that right.

Ms. Mackie's attorney, Robert J. Wayne, made a similar request. Tallman objected.

"This is a turn we hadn't anticipated," Tallman said. "I've never been in a position quite like this."

Judge Bilby called a recess. The attorneys huddled and emerged with an agreement.

Ms. Friera and Ms. Mackie will sign a stipulation of facts in the case prepared by the United States attorney's office, acknowledging their participation in the bald-eagle scheme and paving the way for Judge Bilby to make a decision.

The government also agreed to drop felony charges against Olsen and the three Scarboroughs if they agreed to plead guilty to the misdemeanor charge.

The four defendants did just that later in the day. Judge Bilby set sentencing for October 30.

Each faces a maximum sentence of one year in jail and a $5,000 fine. If convicted on felony charges, each could have been sentenced to two years in jail and a $2,000 fine.

The four didn't disagree when Tallman told Judge Bilby the government could prove that:

- Olsen sold a bald eagle to an undercover federal agent last March for $50, and claimed credit for shooting the bird.
- James H. Scarborough, Jr., and Olsen told the undercover agents they were hunters, and had sold many eagles to Ms. Friera.
- Scarborough, Jr., told the undercover agent two months ago that he killed 30 eagles so far this year. "I am the eagle man," Scarborough reportedly told the agent. "If anyone wants eagles, they come to me."
- Darryl George Scarborough and his wife, Ms. Friera, sold parts of bald eagles, goshawks and peregrine falcons to the undercover agent last October. Ms. Friera reportedly told the agent her husband had killed the falcon, an endangered species, and shot eagles, hawks and falcons on the Lummi Reservation.
- Rhonda Scarborough sold 50 eagle feathers for $25 to the undercover agent last July.

The seventh defendant, Johnson, wasn't in court. Tallman said Johnson was considering pleading guilty to reduced charges and testifying for the prosecution before yesterday, and is expected to appear before Judge Bilby tomorrow.

"We hope the result of all this will be to bring to the attention of people involved in the killing and trading of bald eagles the seriousness of what they're doing," Tallman said. "We think it's quite a problem in the district (Western Washington)."

During the investigation, Tallman said, agents purchased or seized parts of more than 50 bald eagles, 12 hawks, six owls and two swans.

The bald eagle is listed as an endangered species in 43 states, and a "threatened" species — one step removed — in five others, including Washington.

Of the 21 persons indicted in July, six had gone to court before yesterday. Four had been found guilty, one acquitted, while charges against one were dismissed.

FCNL
FRIENDS COMMITTEE ON NATIONAL LEGISLATION
245 Second Street, N.E.
Washington, D.C. 20002
(202) 547-6000

REC'D OCT 1 1981

September 30, 1981

Mr. Tim Woodcock
Senate Select Committee on Indian Affairs
Washington, DC 20510

Dear Tim,

Here is the testimony of the Friends Committee on National Legislation on S. 874.

Steve Linscheid prepared this statement.

I am sorry we did not have it ready for the day of the hearing, but I trust we are in time to have it included in the record.

Thank you!

Sincerely,

Ted Zuern

Ted Zuern
Legislative Advocate

Robert P. Fetter *Clerk, General Committee* Ralph Rose *Clerk, Executive Committee* E. Raymond Wilson *Executive Secretary Emeritus*
Edward F. Snyder *Executive Secretary* Frances E. Neely *Legislative Secretary* Ruth Flower *Legislative Secretary*
Wilton E. Hartzler *Associate Secretary for Administration* Nick Block *Finance Secretary*

STATEMENT ON S. 874
"THE STEELHEAD TROUT PROTECTION ACT"

Submitted by

FRIENDS COMMITTEE ON NATIONAL LEGISLATION
and
AMERICAN FRIENDS SERVICE COMMITTEE

to

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

September 28, 1981

The Friends Committee on National Legislation and American Friends Service Committee wish to express our firm opposition to S. 874. While no one person or organization can represent the views of all Friends, there is a long-standing tradition of friendship with and concern for Indians among members of the Religious Society of Friends. The American Friends Service Committee (AFSC) has been deeply involved with issues of Indian treaty fishing rights in the Pacific Northwest for many years. The Friends Committee on National Legislation (FCNL) has a history of involvement with Indian legislative issues in Washington, D.C., supporting Indian treaty rights, Indian self-determination, and fulfillment of the U.S. government's "trust responsibility" toward tribes. A year ago, both FCNL and AFSC actively supported passage of the Northwest Salmon and Steelhead Conservation and Enhancement Act of 1980 (P.L. 96-561), legislation which set a framework for cooperation between Indian and non-Indian fishermen in conserving, managing, and enhancing the fishing resources of the Pacific Northwest.

We do not presume to speak for the tribes. Rather, we speak as non-Indians who stand in support of American Indian and Alaska Native rights. We call attention to the statement in the recent report of the U.S. Commission on Civil Rights that "a society is not judged by how well it treats its rich or politically powerful members but by how well it treats its less powerful groups. Indians are perhaps the least powerful group in American society." *(Indian Tribes: A Continuing Quest for Survival,* 1981) Through treaties, our nation has made certain commitments to Indian tribes. These promises and obligations are not something to be taken lightly.

We strongly oppose S. 874. Among other things, it would seriously undermine three ingredients necessary for settling fishing rights conflicts in the Northwest: Indian treaty rights; conservation and enhancement of the resources; and cooperation between parties which historically have been in conflict with one another.

Treaty Rights. The treaty rights of the Pacific Northwest tribes to fish for salmon and steelhead should no longer be in question by anyone. The United States Supreme Court issued a definitive ruling in July of 1979, confirming the fishing rights reserved by the tribes in treaties made with the U.S. In the treaties, made in the 1850's, the tribes ceded vast amounts of land, while expressly reserving their rights to the fisheries. The U.S. Supreme Court determined that it is "perfectly clear...that the Indians were vitally interested in protecting their right to take fish at usual and accustomed places...and that they were invited by the white negotiators to rely and in fact did rely heavily on the good faith of the United States to protect that right." *(Washington v. Washington State Commercial Passenger Fishing Vessel Assn.)*

It is these rights, reserved by the tribes and confirmed recently by the U.S. Supreme Court, which S. 874 seeks to abrogate. The rights apply equally to both salmon and steelhead, and both are an important part of the life and cultures of the Northwest tribes. The value of salmon and steelhead goes far beyond simple economic worth. It cannot be understood without considering the social, cultural, and religious importance of salmon and steelhead in the tribal cultures.

Conservation of the Resource. S. 874 should also be opposed in the interest of conserving salmon and steelhead resources. Though pretending to be a conservation measure, S. 874 actually could obstruct efforts to conserve and enhance the resource. Very likely, its approval would lead to new legal suits, including a constitutional challenge. It would create conflicts which could only delay addressing the real problems responsible for depleted fishing resources. Indian fishing did not cause the depletion of salmon and steelhead resources, and as such, the elimination of Indian steelhead fishing will do nothing to address real problems such as environmental degradation, poor management, etc. We are encouraged to note the resolution passed by the Northwest Regional Conservation Committee of the Sierra Club, which "opposes S. 874 as a divisive and diversionary bill that provides no assurance that the steelhead will be protected."

If Congress is really serious about the conservation of the salmon and steelhead resources in the Pacific Northwest, it should be focusing on implementation and funding of the important legislation which was enacted into law last year. The Salmon and Steelhead Conservation and Enhancement Act of 1980 establishes a framework for cooperation between Indians and non-Indians in addressing the management, conservation, and enhancement of the fishing resources in the Pacific Northwest. It is a significant step toward the recovery of the depleted salmon and steelhead stocks, to the benefit of Indians and non-Indians alike. The Act recognizes the importance of cooperation between the various parties, and respects the treaty rights of the Northwest tribes. A positive step which the Congress could take now would be to ensure adequate funding for the development of reports and plans for coordinated research, enforcement, enhancement, and management of the salmon and steelhead resources, as provided in Part B, Section 112 of the Act.

Cooperation vs. Confrontation. Indian treaty fishing rights have been confirmed by the highest court in our nation. Legislation for the conservation and enhancement of the fishing resources has been enacted into law. The question before us now is "where do we go from here--confrontation or cooperation?"

S. 874 chooses the course of controntation, at the price of this nation's commitments to Indian tribes, at the price of the fishing resource, and at the price of the relationships between Indians and non-Indians in the Pacific Northwest.

In 1970, a report prepared for the American Friends Service Committee stated what we still believe is the root of much of the conflict surrounding fishing rights in the Northwest:

> However real and serious the problems of conservation, they are not the basis of this controversy. The real issue is the attitude of the whole society toward difference...
>
> Hostility rises from the threat presented by the differences, not from danger to the fish. Efforts to control Indian fishing have been rationalized around conservation, but they have recognized neither the pervasive importance of environmental changes nor the questions of humanness.
>
> Indians, on the receiving end, see the matter more clearly than do non-Indians. Although they may not express it in so many words, they are well aware that the aim is to get rid of them as Indians...The fact remains that for many Indians survival as Indians requires the survival of Indian fishing; the end of Indian fishing would be a great step toward extinction as Indians. *(Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians.* A Report Prepared for the American Friends Service Committee. Seattle: University of Washington Press, 1970)

The unwillingness to respect Indian treaty rights, as exemplified by this bill, is based in part on a profound inability by some to respect Indian people and their cultures. S. 874 asserts that "the right to license sportsmen to fish for steelhead trout on Indian lands may well be more valuable to Indian tribes than is a commercial fishery for steelhead trout." Valuable in what way?

At the heart of the issue is not whether game fishing is more valuable, but whether one culture is more valuable than another--whether one culture is superior in its definition of values. This legislation assumes that the "correct" assessment of value is an economic one, seen through the eyes of non-Indians. It is an assumption grounded in racism.

We urge the Committee to reject this bill, and instead focus on constructive efforts to solve the fishing resource problems in the Pacific Northwest. Thank you.

Steve Linscheid, *Legislative Advocate*
Friends Committee on National Legislation

INDIAN LAW RESOURCE CENTER
601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

October 14, 1981

Honorable William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Cohen:

Would you please insert the enclosed letter into the record of the hearings on S. 874 which we understand remain open until October 23, 1981.

Thank you.

Sincerely,

Robert T. Coulter
Executive Director

Enclosure

INDIAN LAW RESOURCE CENTER
601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

October 13, 1981

Honorable William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D. C 20510

Dear Mr. Chairman:

We are writing to state that the Indian Law Resource Center strongly opposes Senate Bill 874, which would abrogate Indian treaty rights to fish for steelhead. The Indian Law Resource Center is a charitably funded, Indian controlled public interest law office, which represents Indians in federal courts and international fora. The Center is also a Non-Governmental Organization in consultative status with the United Nations Economic and Social Council.

S. 874 is a shocking attempt to abrogate treaties negotiated with Pacific Northwest Indian tribes. In these treaties, the tribes granted to the United States millions of acres of land. In exchange for giving this land to the United States, the tribes bargained for and secured a guarantee that they could retain their rights to fish. S. 874 would break this solemn agreement. If enacted, S. 874 would also amount to an unconsented taking of treaty-guaranteed property rights, raising serious questions under constitutional law and international law.

Fishing is of central religious, cultural, political and economic significance to Pacific Northwest tribes. For some tribes, fishing for steelhead serves as the main source of income. A forced taking of these fishing rights, in light of the unquestioned meaning of the treaties and importance of the steelhead to the tribes, would be a gross violation of human rights that would degrade the United States in the eyes of the world.

Sincerely,

Robert T. Coulter
Executive Director

REC'D OCT 6 1981

INDIAN RIGHTS ASSOCIATION

Founded 1882

1505 RACE STREET
PHILADELPHIA, PA. 19102
(215) LO 3-8349

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TESTIMONY OF
INDIAN RIGHTS ASSOCIATION
ON
STEELHEAD TROUT PROTECTION ACT

Senator Gorton's "Steelhead Trout Protection Act", S.874 cannot but evoke memories of the appalling double-speak contained in the famous Indian bills introduced by Representative Cunningham during the 95th Congress, and leaves one with the depressing thought that although the Lord seemed willing enough to take away Mr. Cunningham, He has given back, in equal measure, Mr. Gorton.

Legislation that seeks to abrogate Indian treaty rights is often phrased to lead a casual reader to believe that Indians are to be the beneficiaries of some new privilege. Congressman Cunningham sought to grant "equal opportunities" to Indians by wiping out all reservations and treaty rights; Mr. Gorton, in S.874 dangles the proposition that Indians will benefit more from licensing steelhead sports fishermen than from exercising their treaty right to the steelhead runs.

Mr. Gorton, writing in support of his bill in the Seattle Post-Intelligencer, on July 10, 1981 (a forum to which he might logically be expected to address his best arguments) expands upon how highly prized the steelhead trout is to sports fishermen, cites a statistic of $103.47 spent in pursuit of each steelhead, and then says that in 6 of 7 rivers, Indians have caught more steelhead than non-Indians have. This, in itself, appears alarming enough to Mr. Gorton to warrant introducing his bill. "The sportsmen who seek steelhead trout have waited long enough" he warns.

Indians, long involved in seeking recognition of their treaty rights, cite other figures. Joe Delacruz also writing for the Seattle Post-Intelligencer, addressed the total catch of steelhead in the treaty fishing area, rather than selectively choosing seven rivers. During the same '79-'80 season cited by Mr. Gorton, non-Indians sports fishermen caught 21,000 more steelhead than did Indians.

For a bill which seeks to portray itself as protecting steelhead, it is curious that there is no allegation, under Section 2 (Congressional "Findings") that any harm has been done to the steelhead resource had been by virtue of Indian commercial fishing.

The bill raises a number of other questions, as well. It purports to allow the tribes to license non-Indians fishing within reservations, as though tribes could not do so already, without Mr. Gorton's concession. To add, further, that the State cannot require an Indian to obtain a license when fishing within the external boundaries of the reservation, on trust lands, or usual and accustomed fishing grounds, is simply to affirm present law.

An additional problem with S.874 is the provision for compensation. Mr. Gorton has stated that he does not see his bill as an abrogation of Indian treaty rights but has provided a forum for redress, ie. the Court of Claims, in the likely event that the treaty tribes disagree with him. Any monetary compensation awarded, however, is to be reduced by "the value of the right to license a steelhead trout sport fishery."

By stripping treaty Indians of their right to harvest steelhead commercially, this bill seeks instead to force the tribes, as an alternative, to charge licensing fees to non-Indian sports fishermen on their reservations. It is a curious trade-off envisioned by Mr. Gorton, wherein the Indians lose the right to fish for steelhead at off-reservation "usual and accustomed" locations, and in turn are asked to profit from the opportunity of letting non-Indians come on to their reservations to take Indian fish.

Should a tribe choose not to license non-Indians sport fishing within its reservation, the wording of the bill implies that the Court of Claims could nevertheless deduct the "value" of that right from any monetary compensation. Furthermore, since Mr. Gorton suggests that this right is more valuable than the present commercial value of the Indian-caught steelhead, it would appear that monetary compensation is a hollow promise at best.

Even if Mr. Gorton genuinely believes that the treaty Indians could realize more financial benefit from his proposed arrangement, it is at the cost to the tribes of having their reservations overrun by non-Indians. What is truly appalling about the bill, however, is that it so completely ignores the non-monetary importance of the steelhead to the Indians, and cavalierly pretends to be doing them a favor.

The bill is an ill-disguised attempt to undermine Indian treaty rights upheld by the U.S. Supreme Court, and deserves the strongest possible opposition.

JESUIT
OFFICE OF SOCIAL MINISTRIES

1717 Massachusetts Avenue, N.W. / Room 402 / Washington, D.C. 20036 / (202) 462-7008

REC'D SEP [illegible] 1981

September 24, 1981

Dear Tim,

Enclosed is copy of Statement from Bureau of Catholic Indian Missions on S. 874 Hearing on Sept. 28th.

It is submitted for the record since there will not be opportunity for oral testimony. It is good to have the tribal groups present for that testimony.

Thank you!

Best regards,

Ted Zuern

Ted Zuern

P. S. Lest you wonder, I also work at FCNL. TZ

Bureau of CATHOLIC INDIAN MISSIONS

2021 H Street, Northwest
Washington, D. C. 20006

TESTIMONY OF TED ZUERN, S.J. FOR THE BUREAU OF CATHOLIC INDIAN MISSIONS

TO THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 874

AT WASHINGTON, D.C., SEPTEMBER 28, 1981

I am Ted Zuern, S.J., a Catholic priest and a Jesuit. I represent the Bureau of Catholic Indian Missions, located at 2021 H Street, Northwest, in Washington, D.C. I appreciate this opportunity to present the position of the Bureau in opposition to S. 874. This position is consistent with the Bureau's concern through more than a century for the treaty rights of American Indian tribes. It may be proper to note in passing that the Bureau of Catholic Indian Missions is the oldest organized agency in the Catholic Church in the United States.

The Bureau of Catholic Indian Missions opposes S. 874. It urges that S. 874 never be enacted into law. It takes this position because Section 3(a) of that bill would violate the sacred word this nation gave in the solemn treaty agreements which it signed with American Indian tribes. S. 874 seeks to contravene a treaty agreement specifically recognized and upheld by the U.S. Supreme Court on July 2, 1979.

Section 3(a) of S. 874 states: "Notwithstanding any Indian treaty or any Federal court decision interpreting Indian tribal fishing rights, the laws and regulations of a State prohibiting, restricting, or regulating the taking, possession, transportation, or sale of steelhead trout (salmo gairdnerii) shall apply to and be enforceable against Indian tribes fishing at places within such

State both within and without the boundaries of an Indian reservation in such State in the same manner and to the same extent as such laws and regulations apply to other persons...." (Emphasis added.)

Such provision, enacted into law, would breach this nation's moral integrity and shatter the sacred worth of its promised word. This Committee must not use its legislative position to recommend that Congress use S. 874 to wrench the balance of justice, essential to this nation's fulfilling its obligations.

This statement attempts to focus on the following points:

1. The distinct and unique political relationship of the American Indian Tribal Governments to the U.S. Federal Government;
2. The Federal Government's obligation, according to Article VI of the Constitution of the United States, to recognize such treaties as "the supreme law of the land";
3. The obligation, therefore, of the U.S. Senate to reject S. 874.

The relationship between American Indian tribes and the Federal Government is a political relationship. It is not based on the racial qualities of either group. True, American Indians are radically distinct from the more populous white and black races of this nation, but that racial distinction does not determine this political relationship. The factors determining this political relationship are the governmental structures and powers used in establishing agreements between American Indian tribes and the United States of America. Political identity, not racial identity, underlies the relationship between American Indians and the United States.

When the Constitution of the United States was ratified by the original States, foreign nations, the several States which compose the federal union, and Indian tribes were recognized as political entities distinct from the United States Government. Article I, Section 8 of the Constitution specifies Congressional power "to regulate commerce with foreign nations, among the several states, and with Indian tribes." The political distinctiveness of American Indians as citizens of their tribes is recognized in the very legal foundation of this nation.

More than a century later, in 1924, by an Act of Congress all American Indians were also recognized as citizens of the United States. Thus, American Indians are among those rare citizens of the United States who possess dual citizenship.

As recently as 1974, recognition of this dual citizenship was made in the case of Morton v. Mancari. In this law suit, employees of the Bureau of Indian Affairs challenged the statutory policy of "Indian employment preference" as constituting an invidious discrimination based on race. The court found that Indian preference was not racial. It found: "The preference, as applied, is granted to Indians not as a discrete racial group, but rather as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion."

Most Americans with dual citizenship have their other citizenship in a nation with territorial boundaries beyond those of the United States. The distinctiveness of the national boundaries allows such dual citizenship to be recognized more clearly. There is need, then, to consider the nature of dual citizenship within one set of national boundaries.

Furthermore, the citizenship which an American Indian has both in his tribe and in the United States is not exactly the same as that of the citizenship an American has in his own State and in his nation. American Indian tribes are not identical with the fifty States. There are similarities but also differences. By their ratification of the Constitution, the original States relinquished to the Federal Government some powers which they had properly exercised prior to the adoption of the Constitution. By the treaties that American Indian tribes signed with the United States, they relinquished to the Federal Government some powers which they had properly exercised prior to the signing of the treaties. Both the States and the Tribes reserved for themselves other governmental powers and rights.

The citizens of the original States united themselves and their lands to form the United States of America. Thus, they automatically became citizens of the United States. Later, States were established on land already claimed by the United States and were composed of citizens who already possessed United States citizenship. Today every person who is born within any one of the States possesses by the fact of birth citizenship both in that State and in the United States.

In most instances, Indian tribes reserved in the treaties they signed some of their original land for their own continuing use, although they did transfer the major portion of their land to the United States. Therefore, their reservation land is not a landgrant from the United States. It is land that was theirs before there was a United States. Tribal citizens were granted citizenship in the United States generations after the nation's founding, though they had originally been denied United States citizenship. Therefore, individual Indians today possess at birth both tribal and United States citizenship. Moreover, each Indian is also a citizen of the State in which he is born.

The distinct and unique political position of American Indians is not based then on their racial identity but on their identity as members of native political organizations with legal relationships to the United States.

In 1831, Chief Justice John Marshall in handing down the U.S. Supreme Court decision in the case of Cherokee Nation v. Georgia stated that between the United States and American Indian tribes exists a relationship "perhaps unlike that of any other two people in existence." He continued that it is a relationship "marked by peculiar and cardinal distinctions that exist nowhere else." It was at this time that he described the Cherokee Tribe and other tribes as being not foreign but "domestic, dependent nations."

Some critics have difficulty accepting the distinctiveness of American Indians' dual citizenship. Nonetheless, American Indians do have two citizenships. Their tribal political identity comes from their citizenship in'domestic, dependent nations.' Their American political identity comes from their citizenship in the United States. Neither the 'domestic, dependent nations' nor the United States has the legal competence to alter or eliminate the other's citizenship.

On September 26, 1980 during his campaign for the presidency of the Unites States, President Reagan released a "Question and Answer" statement on issues that concern American Indian tribes. He said, "The traditional relationship between the United States and Indian governments is a 'government to government relationship.'" (Emphasis added.) He continued: "The Reagan Administration would be opposed to the abrogation of Indian treaties and the termination of the unique relationship between the Federal Government and the Indian tribes. ...I stated earlier that because I believe in the rule of law, I support respect for and adherence to existing Indian treaties. The provisions of many Indian treaties are still valid law and impose duties and responsibilities on both Indian governments and the United States government today. The support and fulfillment of Indian treaties is bound up with the honor and integrity of the United States. The United States should keep its pledged word to any nation, great or small. Supreme Court Justice Black expressed it this way, 'Great nations, like great men, should keep their word.'"

In his Handbook of Federal Indian Law, Felix S. Cohen, the most respected authority on Indian law whom this nation has produced, stated "That treaties with Indian tribes are of the same dignity as treaties with foreign nations is a view which has been repeatedly confirmed by the Federal courts, and never successfully challenged.

He was recognizing what had been determined, for example, in 1852 in the Michigan case of Turner v. American Baptist Missionary Union: "It is contended that a treaty with Indian tribes, has not the same dignity or effect, as a treaty with a foreign and independent nation. This distinction is not authorized by the Constitution. Since the commencement of the government, treaties have been made with the Indians, and the treaty-making power has been exercised in making them. They are treaties, within the meaning of the Constitution, and, as such, are the supreme laws of the land." (Emphasis added.)

Reference is made to Article VI, Section 2 of the Constitution which states: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land...."

American Indian citizenship rests on the sovereign nature of American Indian Tribal Governments. In his Handbook of Federal Indian Law, Cohen states: "The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles:

1. An Indian tribe possesses, in the first instance, all the powers of any sovereign state.
2. Conquest renders the tribe subject to the legislative power of the United States and, in substance, terminates the external powers of sovereignty of the tribe.
3. These powers are subject to qualification by treaties and by express legislation of Congress, but save as thus expressly qualified,

> full powers of internal sovereignty in the Indian tribes and in their duly constituted organs of government."

Despite the legal and juridically recognized dual citizenship of American Indians and the absolute validity of treaties between tribal governments and the Federal Government of the United States, racist arguments often discredit and demean American Indian persons and groups. Racist statements have suggested that American Indians are an inferior race. In its recent publication, INDIAN TRIBES, A Continuing Quest for Survival, the United States Commission on Civil Rights states: "This racism has served to justify a view now repudiated, but which still lingers in the public mind, that Indians are not entitled to the same legal rights as others in this country. ...At one extreme the concept of inferior status of Indians was used to justify genocide; at the other, apparently benevolent side, the attempt was to assimilate them into the dominant society. Whatever the rationale or motive, whether rooted in voluntary efforts or coercion, the common denominator has been the belief that Indian society is an inferior lifestyle."

This belief, which also demeans the person who holds it, is described in the words of D'Arcy McNickel (Native American Tribalism) as "a conviction that native people were a lower grade of humanity for whom the accepted canons of respect need not apply; one did not debase oneself by ruining a native people. At times, this conviction was stated explicitly by men in public office, but whether expressed or not, it generated decision and action."

Some root of this racist attitude against American Indians comes from a phrase in the Cherokee Nation v. Georgia decision. Chief Justice Marshall in trying to expand what is meant by 'domestic, dependent nations' referred to the relationship of American Indian tribes with the Federal Government as a relationship which "resembles that of a ward to his guardian." (Emphasis added.)

Too frequently the word 'resembles' has been overlooked and "ward of the Government" has been used to describe American Indians. Marshall did not define American Indians as "wards." He struggled to explain a difficult concept. He made a general comparison not an identification. He saw that American Indian Tribal Governments had lost some sovereign rights, such as that of making treaties with national powers foreign to the United States, and that in some way the Federal Government had accepted responsibilities to American Indian tribes similar to those of a guardian to an orphaned child. A definition of 'domestic, dependent nations' is difficult to make.

"Ward of the Government" has lingered as a catch phrase, but its nuances contradict Marshall's attempt to describe the American Indian-Federal Government relationship. That phrase does not describe today's American Indians. No responsible member of the U.S. Government uses that phrase. It is culturally, politically, historically false. Yet the term continues to surface. In its report, INDIAN TRIBES, A Continuing Quest for Survival, the U.S. Commission on Civil Rights observes that "the fact that Indians were in some sense 'wards' of the Federal Government did not justify a county in Arizona denying the right to vote to members of the Mohave-Apache Tribe."

It should be noted that dual citizenship demands dual responsibilities. American Indians, as United States citizens, share with all Americans the obligation to see that this nation keeps its word, written in the treaties signed with their forefathers. American Indians, as tribal citizens, are obliged to preserve for their descendents those benefits promised to succeeding tribal generations by the United States Government when that Government received from their Indian forefathers the land on which the United States of America now exists.

Or as Felix S. Cohen observed: "The reciprocal obligations assumed by the Federal Government and by the Indian tribes during a period of almost a hundred years constitutes a chief source of present-day Indian law."

The position of the American Indian within the United States remains widely misunderstood. Fundamental elements are frequently overlooked or misinterpreted. Many persons assume that racial difference underlies claims for Indian rights. In truth, "race" has never been the basis of American Indian Tribal Governments' relationship to Federal and State Governments.

These three political systems, Federal, State and Tribal, are involved. Consequently, there is the involvement of two national citizenships and one State citizenship, all of which are possessed by American Indians but only two of which are possessed by Americans who are not Indian.

In most conflicts, States and Tribes oppose each other. The Federal Government more frequently attempts to mediate between the other two. Furthermore, legal problems vary according to the scope of tribal powers recognized by each treaty for each tribe and in each State. The answer is not found in rulings for or against those who are Indian or those who are not Indian. In each conflict the exact extent of State and Tribal jurisdiction must be determined.

S. 874 arises directly from a long and sometimes bitter dispute in the Pacific Northwest over the commercial harvesting of salmon and steelhead trout. Both the State Government and the Tribal Governments claimed the right to control and regulate fishing activity. The interests of American Indians who have the support of treaty rights conflicted with the interests of other Americans who lack the support of treaty rights. Resolution of the conflict could come not from racial identities nor from economic development. The resolution could only come from justice established by law.

In 1977, the Final Report of the American Indian Policy Review Commission of the United States Congress stated: "The rights of Indian people to take fish and game and gather food are and have historically been an integral part of their subsistence as well as their culture and religious heritage. In turn they have formed a foundation for their trade and commerce. These rights were widely recognized in treaty negotiations and have been found by the courts to exist even where not specifically reserved in treaties."

Tribes continue to recognize their own sovereignty which the United States through many individual treaties has also recognized. Thus, Tribal Governments have jurisdiction over tribal members fishing within their own reservation boundaries. Moreover, where pursuant to treaty agreements, they retain fishing rights in waters beyond their reservation boundaries. Tribal Governments retain jurisdiction over tribal members fishing in those waters. Conflict looms when States also exercise jurisdiction over their members fishing in those same waters.

In the Institute for the Development of Indian Law publication, Old Problems--Present Issues, it is stated that: "The regulation of fish and wildlife resources beyond the Indian reservation boundaries is inherently the domain of the various States. These powers may, however, be overridden by a Federal treaty if they would 'impair a right granted or reserved by Federal law.' This is also the case where rights are reserved to an Indian tribe on lands ceded where their hunting and fishing rights are still preserved."

The U.S. Supreme Court on July 2, 1979 issued a decision that had long been awaited by Pacific Northwest Indian tribes and the State of Washington, by both "treaty fishermen" and "non-treaty fishermen," by those who respected Indian rights and by those who denied their continued existence. The Supreme Court declared that treaties did grant to the Pacific Northwest Indian Tribes rights distinct from those possessed by non-Indian citizens. The reality of the dual citizenship possessed by Indians was recognized again by the nation's highest court.

The Indian fishermen or "treaty fishermen" were acknowledged to have a legal claim to half of the commercial harvest of salmon and steelhead trout. The

Supreme Court, as had the Federal District Court in its earlier decision, made no distinction between salmon and steelhead. The treaties, according to the decisions of both Courts, apply equally to both species. The Tribal Governments had retained their fishing rights for themselves and for their descendents by the same treaties in which they had given up lands they had used until those treaties were signed in the mid-1880s. The Supreme Court recognized those treaties as the supreme law of the land as the Constitution had provided.

Now S. 874 has been introduced into the U.S. Senate. It allows for steelhead trout to be reclassified without considering the rights of the Pacific Northwest Tribes. Thus, S. 874 goes against the decision of the Supreme Court. It would allow the Indians to be deceived again, to be denied the rights they had never relinquished, though for long years prior to the 1979 decision those rights had often been ignored.

S. 874 contravenes the supreme law of the land. S. 874 denies the legal protection provided by the Constitution as was specified by the highest Court established by that Constitution. S. 874 betrays trust placed in the word of the United States by the American Indians of the Pacific Northwest. It tempts Congress to abandon its constitutionally established responsibility under the Indian Commerce clause of Article I, Section 8.

Almost thirty years ago in the "Yale Law Journal," Felix S. Cohen wrote this reflection:

> Like the miner's canary, the Indian marks the shift from fresh to poison air in our political atmosphere, ...our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall of our democratic faith.

Congress must not abandon its 'democratic faith'!

I quietly urge you to reject S. 874.

Thank you for considering this statement.

Karl A. Funke & Associates, Inc.
729 Second Street, N.E. • Washington, D.C. 20002 • (202) 544-4166

November 25, 1981

Honorable William S. Cohen
Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman,

As a follow-up to the Committee's hearing on September 28, 1981 on S. 874, the Steelhead Trout Protection Act, I would like to submit for the record the attached article from the November issue of the National Fisherman magazine.

A point repeatedly asserted by the Yakima Indian Nation and other tribal witnesses is that the diminished sizes of various runs of anadromous fish in the Pacific Northwest can be directly linked to many years of mismanagement by various state and federal regulatory agencies. Over-fishing by the huge ocean fleets, excessive water diversion for hydroelectric and agricultural uses, and environmental degradation resulting from clear cut logging next to stream beds are just a few examples of the forces working against preservation of the fisheries.

Despite substantial available evidence demonstrating these are the real problems, the U.S. Congress is giving consideration to a bill which ignores the reality and attempts to put the blame on a politically weak minority group, the Northwest's modern day scapegoats; treaty Indian Tribes.

The greatest irony is that the unique legal rights of the Tribes might very well be the best vehicle available for protecting the fish runs. The enclosed article discusses this very issue and references a previous National Fisherman article (May, 1981) which also analyzed laws which Tribes may use to protect runs.

This article discusses what is possibly the single most severe threat to the Northwest's fishery resource - a diminishment of in-stream water flows to the point where migrating fish simply can not get up and downstream. Unfortunately, the Washington State Legislature recently revoked a section of the State's water code which gave priority to the maintenance of minimal in-stream flows where flow standards had previously been established. In the face of this disregard for the essential needs of the fishery resource, the U.S. Senate is asked to pass legislation which its sponsors claim will remedy the situation. How will this be done? By protecting in-stream flows? By prohibiting the destruction of spawning grounds? By limiting the damage from hydroelectric dams? Instead of addressing these issues, the legislation would abrogate treaty rights of Indian tribes that have been affirmed by the Supreme Court and by federal statutes and by giving that right exclusively to sportsmen. I cannot recall ever seeing such an example of disregard for the facts as is evidenced by this legislation.

The involvement of the Yakima Indian Tribe in dealing with the real problems is chronicled in the Tribe's testimony as presented on the 28th of September. A mechanism for undertaking the substantive tasks of beginning to restore the fish runs which was briefly discussed at the hearing, is the Salmon and Steelhead Conservation and Enhancement Act. The Salmon and Steelhead Advisory Commission, established pursuant to the Act is charged with preparing and submitting to the Secretary of Commerce and the Congress a report containing recommendations for the development of a management structure for the effective coordination of research, enhancement, management and enforcement policies for the salmon and steelhead resources. Between $1 and $2 million is presently pending before the Appropriation Subcommittees on Commerce for FY 82 for the implementation of this first part of P.L. 96-561. We are optimistic that when the Commerce Department appropriations bill is finally signed into law that it will contain sufficient funding for the Commission to begin the real and substantive work of coming to grips with this issue. Even without funding the Commission members have already held preliminary planning meetings, a demonstration of their commitment to begin the large task ahead of them.

I think the members of your Committee, your staff and anyone reading the hearing record will benefit by having the attached article made a part of the record particularly when the article is juxtaposed with the action proposed by S. 874.

Respectfully submitted on behalf of the Yakima Indian Nation.

Sincerely,

George Waters

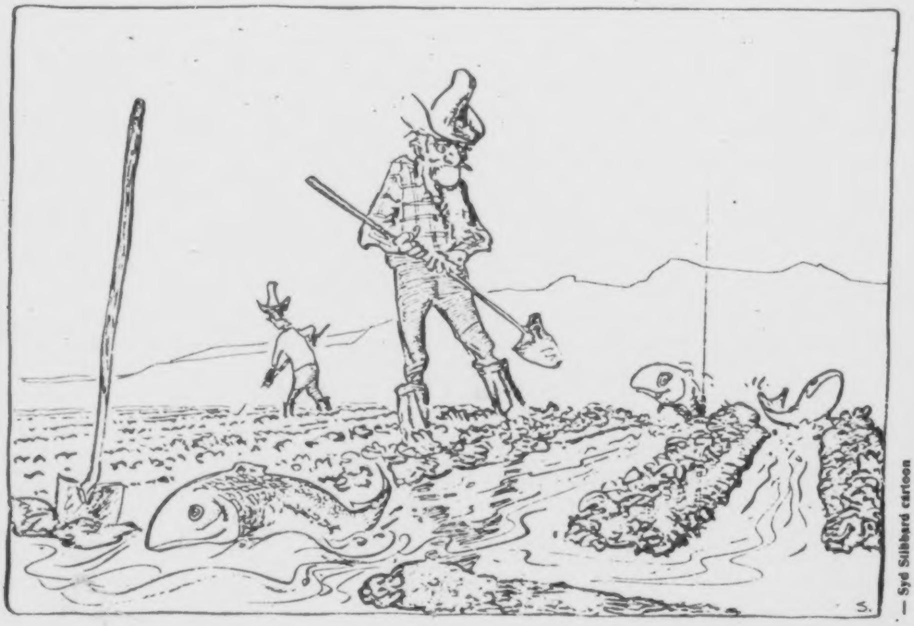
George Waters
Senior Associate

GW/aw

Enclosure

Fishermen Or Farmers —

Who'll Lose In The Water Rights Battle?



— Syd Stibbard cartoon

By Brad Warren

With hardly so much as a murmur from the popular press, a measure that reflects a national tragedy for salmon fishermen became law in Washington state last May.

House Bill 99 — poorly understood by many legislators but backed by Republican leaders and a strong irrigators' lobby — was intended to forestall a potential water crisis for farms. But the new law sets the stage for a battle between fisheries and farming interests for a share of the state's diminishing fresh-water supply. At stake is whether salmon or crops and grazing land will die.

"We're going to see this thing get bloody in a few years, particularly in the dry areas," predicts Allen Jones, an environmental lobbyist who joined fisheries leaders and state fisheries officials in an unsuccessful effort to block the bill. "It's a real blow to the in-stream resources — especially fish."

Drying Up A River

The impetus for the law grew, like most of Washington's $1-billion agriculture business, in the thirsty farmlands in the eastern part of the state.

The Yakima River threads east of the Cascade Mountains and is fed by many tributaries in a 6,000-sq.-mi. watershed. Once the second largest salmon producer in the Columbia River system, with an estimated 500,000-600,000 salmon returning every year, the Yakima today supports a return of several species totaling perhaps 6,000 adults.

Most of the damage was done almost a century ago, when settlers who were eager to irrigate the rich land of the basin erected storage dams that blocked off much of the spawning grounds.

"The fish disappeared," says Bob Tuck, a Yakima Indian Nation fish biologist.

Today, another generation of irrigators, whose orchards and croplands are spreading throughout the basin, draws most of the water from the river each year. As a result, the river has regularly dried up since 1977.

Drying up the river has cost the farmers and residents of the basin dearly. But it has been a disaster for the Yakima Indians, who still rely on fish from the river for partial [illegible] and many of the young fry have been killed each year.

When the Indians went to court to protect the fishery, Yakima basin water users entered a tedious legal battle to decide who could draw how much water. State fisheries and water-management officials also joined the fray, defending their authority to protect fisheries by keeping water in the state's rivers.

As residents appeal to higher courts, the Yakima basin dispute will almost certainly go on for at least 10 years.

Meanwhile, the Legislature has already moved. Prompted by farmers who foresaw the potential for serious water competition from fishermen in the Yakima, lawmakers conducted a sort of preemptive surgery on the state water code last spring.

House Bill 99 revoked a 1979 water code amendment that gave priority to maintaining minimum flow in streams where the state had established flow standards. Without the amendment to provide water, state fisheries and water-management officials have little reason to set minimum flows that cannot be enforced. Fish, in short, may not get water in some streams during a dry year.

Neither the Legislature nor the governor seemed to understand that removing the priority for fish would eventually hurt fishermen.

Furthermore, since fishermen themselves were preoccupied with their campaign to defeat a bill that would have allowed private salmon ocean ranching, legislators could not be expected to grasp the impact of the new water-rights law.

Raising The Stakes

The water-rights dispute — along with the larger problems of river and watershed management — may soon be taken from the lawmakers' hands and be fought out in the federal courts.

The new law is likely to land squarely on the toes of Washington's treaty Indian tribes, who opposed it from the start. Empowered by the Boldt II Decision of September 1980 to block any law or project that would damage their share of the fish, the tribes now hold an ace in the issue of water rights (see NF May '81, p. 12).

"If phase two of the Boldt Decision can be implemented properly," says one tribal council official, "it may not turn out to be any problem."

Beyond their new right to environmental protection of fish, however, the tribes have the backing of a powerful body of court precedent known as the Winters Doctrine. The Doctrine is based on a 1908 federal court decision stating that any federal reservation has a right to as much water as is needed to fulfill the original purpose of the reservation.

Included in this guarantee are military bases, national parks and wilderness areas and all other federal reservations — including Indian reservations.

The tribes, as residents of federal reservations, have already moved to raise the stakes of the water dispute beyond the powers of the Legislature. In the fight for water rights, the Yakima Nation is citing both the Boldt II Decision and the Winters Doctrine.

Among the many legal twists to this issue is an act Congress passed some 25 years ago. A rider attached to this act gave state courts the power to allocate all water rights in a given watershed if a dispute develops over who is entitled to the water. Included in the rider, curiously, is the power to allocate federal water rights.

This law raises some puzzling questions of jurisdiction:

- Did the legislative branch have authority to overrule the judiciary by giving state courts the authority to rule on water rights belonging to a federal reservation?
- If so, how far does this new state power go?
- Can a state court decision be appealed to federal court?

In the first phase of the Yakima basin dispute, a federal court refused to hear the case, saying the issue belongs in the state court system.

The state's rights vs federal rights question has already been tested with regard to allocating the fish resource. In the original Boldt Decision the state lost. Under the Boldt II Decision, the state may even lose authority to allocate water.

Finally, beneath this complicated legal structure lies a history of environmental destruction. Under the westward push of civilization, rivers and watersheds have been literally torn apart. Clear-cutting and overgrazing of watersheds, poor engineering of dams and waterways, sluice mining and poorly planned land development have ruined many of America's great salmon rivers. Once-phenomenal salmon runs and millions of acres of arable land are now lost.

Ironically, farming and fishing — possibly the two industries most damaged by poor management of rivers and watersheds — are pitted against each other by that same damage. If fresh water and good, gravel-bedded streams were as abundant today as they were 130 years ago when Gov. Isaac Stevens obtained most of western Washington from the Indians, there would have been no need for House Bill 99.

Pioneer Law

The classic system of Western Water Law, adopted to suit the dry, western territories during the early 19th century, boiled down to two principles: "First in time is first in right," and "Use it or lose it."

allocated the water of streams throughout the West. While population remained relatively sparse, there was little concern over the fact that "you could literally dry out a river under the law," as one water-management specialist with the state Dept. of Natural Resources put it.

Only in recent years has the government recognized the importance of preventing streams from drying up. The state is now establishing minimum flow levels in certain streams that have reached dangerously low levels. The chief purpose of minimum flows is to allow salmon and steelhead eggs enough water to hatch and, later, enough for the fish to complete their migration to sea and back. To a lesser extent, minimum flows also reserve water for hydropower dams and navigation of rivers.

As a newcomer among claims on water, minimum-flow use under the old — but now restored — system holds little or no priority during a water shortage. "First in time is first in right" means that the longer you've held a water right, the less likely you are to be cut off during a dry spell.

[illegible] the minimum flows are the first to go.

In certain areas, so many people have applied for water rights that a waiting line has developed. Traditionally, first crack at a newly available quantity of water goes to the first person waiting in line without a water right.

One of the ways in which water becomes available is for a previously claimed water right to be released under the second principle of Western Water Law: "Use it or lose it." A water right is deemed abandoned if it hasn't been used for five years. The state, which administers water rights, redistributes the abandoned ones.

The New Law

The amendment the new law revoked would have given minimum flows first crack at abandoned water rights. If all the minimum flows in the state were satisfied, then, under the amendment, the abandoned water right was to be offered to the first person waiting in line for water.

Since turnover among water rights is slow, usually tied to changing ownership of land, the effect of the 1979 amendment and the new law revoking it will be gradual. "Water rights just don't change hands every day," explains state water-rights specialist Howard Isaacson.

But, though the effects will be subtle, revoking the amendment was a clear statement that fish aren't worth the trouble. Under the law now, the state can only put an abandoned water right into a stream if it has filed a claim that has seniority in the waiting line.

Otherwise, the abandoned water right will go immediately to the people — and the water and irrigation districts — who have been waiting in line.

date — effectively giving the minimum flow more seniority that it would normally have. The original priority date of the abandoned water right was transferred to the minimum-flow use.

For example, under the amendment, if a mill opening in, say 1985 (the amendment was not retroactive) were to close 20 years later, giving up its water right, the water could be transferred — with a 20-year-old priority date — to a stream. The stream would then hold a relatively senior water right.

The amendment shuffled minimum flows ahead of everyone else in line and in front of all water-right holders with less seniority than the abandoned water right. This priority-date juggling acquired some foes.

"It's a bookkeeping nightmare," says Isaacson. He contends that giving minimum flows such priority "throws a monkey wrench into the records for water rights."

"It preserves minimum flows at the expense of farmers," argues an aide to Rep. Curt Smith, chief sponsor of the bill. All water users, the aide says, should have an equal shot at abandoned water rights — with no cutting in line.

"It gives priority to minimum flows," says Don Rickets, lobbyist for the Washington Cattlemen's Association. "But our position is that no action by the state should potentially damage any water-right holder. All beneficial uses should have an equal opportunity."

These arguments worked. When Smith, an eastern Washington Republican, brought House Bill 99 into the Legislature, momentum gathered quickly.

Nine legislators signed on as sponsors, and the bill was swiftly moved through agriculture committees. It passed both houses with little struggle and was sent to the governor, who signed it, noting that agriculture is just as important as in-stream uses.

Smith calls the bill "a positive step in correcting a mistake made in 1979." The amendment that his bill repealed, he says, might eventually result in farmers being denied water in certain areas in order to protect fish during a water shortage.

Among the legislators who supported the bill was Pat Fiske, a western Washington Republican who represents a district with a large fishing fleet.

"I understood the bill would only affect those farmers over in eastern Washington," Fiske explains. "I don't really see how it would affect fishermen way over here."

Fiske wasn't the only one who failed to grasp the potential impact of the bill.

Jones, the lobbyist, remarks, "The legislators who usually stand up for fisheries interests didn't seem to see the connection between some in-stream water-rights bill and their fish. The gillnetters and other commercial fishermen were concerned about it, but they were a lot more concerned about other things. It just wasn't enough to beat out the farm block."

Killing Fish

Arguments about equal opportunities for water rights may have a fine ring, but they make no points with fishermen who've seen their livelihood stranded and killed on dry streambeds.

"In the hinterlands, where this bill was aimed, irrigators are the prime competitors for water. Now they'll have the priority," says Phil Sutherland, president of the Puget Sound Gillnetters Association.

The result, ultimately, will be fewer fish for everyone. Salmon that spawn or migrate through eastern Washington contribute to fisheries from Puget Sound and the San Juan Islands to Southeast Alaska.

What is most alarming about Washington's water law is not its direct impact, however, but the ignorance surrounding its passage. The same ignorance has marked decisions that have decimated anadromous fisheries nationwide, often for the short-term benefit of farmers.

As anadromous fish, salmon require a habitable environment not only across thousands of miles of ocean, but along the hundreds of miles of river leading to spawning grounds.

The temperature and cleanliness of water in the river can be critical, because spawning grounds must have cool water, and clean, unsilted gravel beds in which the salmon can make their nests.

Yet, while the damage inflicted on river habitat is abundant and plain to see, government officials — and many fishermen as well — continue to focus only on issues of allocation and harvesting.

Environmental threats to the fishery are usually difficult for journalists to unravel, and so go largely unpublicized.

"I don't think a lot of people understand that the fishery is in danger," says Gary Peterson, a member of the Northwest Indian Fisheries Commission. The commission has led tribal efforts to protect fishery habitat and rebuild fish stocks, along with taking a role in the more visible fight for Indian fishing rights. The commission's work, and that of a handful of non-Indian fisheries advocates like Phil Sutherland, has been an exception in the resource-hungry world of environmental policy making.

The history of commercial fishing in the West is a history of northward migration and abandonment of rivers rendered uninhabitable to salmon. Drained by irrigation projects, silted and blocked by logjams from riverside timber harvesting or by bridges and roads, or stopped up by power dams, most rivers in the West no longer spawn multiple runs of each of the five Pacific salmon species.

In this destruction, irrigation has played a significant role. Anthony Netboy, considered an authority on salmon, has chronicled in detail the fate of salmon in the Northwest. In his book "The Columbian River Salmon And Steelhead Trout," Netboy writes:

"The advent of agriculture, particularly that dependent on irrigation, initiates ecological changes in the biotic community. As the land is put to the plow, it begins to contribute loads of silt to streams teeming with fish, thus making the fish's migration more difficult and reducing the quality of the spawning and rearing areas. The rapid spread of irrigation agriculture in parts of the Columbia basin has diverted increasingly larger amounts of water from salmon rivers, often when it was most needed for upstream or downstream migration."

While irrigation is often the main competitor for water, ignorance about the needs of fish — or disregard for those needs — has killed whole races of salmon. Dam building, partly for irrigation and partly for power, has wiped out most of the Columbia River system's salmon.

In "Wheels of Fortune," a personal memoir of the Columbia River fishery (see NF Sept. '81, p. 98), Francis Seufert recalls the impact of Grand Coulee Dam, which shut off more than 1,100 miles of the river:

"On the Columbia River, up until the early 1930s, you always heard the term 'royal chinooks.' These royal chinooks were big salmon, starting at 30 lbs. and on up. Because of their size, when you packed them into cans, only one slice of salmon was necessary to fill the can.

"These huge salmon were plentiful. You would often get several tons a day during June, but this entire run was wiped out when the government built Grand Coulee Dam. No provisions were made by the federal government to try to save this fine run of prime chinook salmon on their way beyond the Canadian boundary to spawn."

Blocking migration is not the only damage dams have inflicted on Pacific salmon. Throughout the Northwest, "drawdown" (drawing down the water levels) of rivers wipes out millions of salmon. Much of the fault lies with misunderstanding and ignorance about minimum flows.

For example, in 1976, during a test to see how low the water level on part of the Columbia would go if water were used to cool two nuclear plants at Hanford, Wash., 2,800,000 wild, fall chinook salmon died in the gravel.

Priest Rapids Dam lowered the flow from an estimated 62,000 cu. ft. per second to 36,000. Then, because a local utility continued to draw on the river to generate power, the flow remained at this low level for longer than the anticipated 24 hours. Miles of salmon redds on downstream gravel beds were exposed for several days. The Washington Public Power Supply System, which conducted the test, failed to enforce a return to pre-test flow levels and was found liable for fish losses.

Similar problems have crippled salmon runs in Montana where, according to estimates by state Dept. of Fish, Wildlife and Parks officials, half the salmon eggs in the Flathead River dried out and perished due to hydropower drawdowns during 1979.

A recent study found that stream fluctuations caused by hydropower dams on Washington's Cowlitz River killed up to 18,000 small fish a day.

Netboy, writing about the Sacramento River in his book "The Salmon: Their Fight for Survival," describes a condition prevalent throughout much of the West:

"Irrigators or power companies hold a first lien on the water, and fish, so to speak, must stand in line. Often, there is not enough water for them to complete their spawning migrations."

Politics Of Survival

This history of environmental destruction is why Washington's treaty Indian tribes — particularly the Yakima Nation — insist that minimum flows must be maintained.

Last fall, the Yakimas obtained a court order to prevent irrigators from closing the storage dams immediately after the irrigation season in order to protect the Yakima River's wild spring chinook. The Boldt II treaty right provided the legal leverage.

The prospect of Boldt II's bringing down intervention by the courts was one of the main arguments that Washington's Dept. of Fisheries used in lobbying against House Bill 99. The bill, the department's legislative liaison contended might not only degrade the fisheries habitat, but worse, perhaps, might result in federal "usurpation of state responsibilities."

This may or may not happen. But it is a revealing sign that the Dept. of Fisheries is politically on the defensive.

If the salmon fisheries are to survive, fishermen cannot afford to leave the fight to a self-protective government agency. And the handful of fisheries advocates and tribal leaders who are seeking to protect fisheries habitat are outnumbered, outspent and outvoted by farm and energy interests.

The fight for water has just begun. It is rooted in an insight expressed by Phil Sutherland: "All of us, as we begin to get acquainted with the effects of this civilization, are realizing that there are limitations to the resources."

The Cattleman's Association realized this when it stepped in to push House Bill 99. To compete for water, fishermen may have to rally all the clout they can get.

Washington's Yakima basin water dispute may not, in itself, alter the nation's water picture nor greatly affect the national salmon catch. But it demonstrates the water issue's importance to the fisheries.

Dams and irrigation projects will continue to grow up in rivers throughout the country. With energy prices climbing and farmlands shrinking, these uses may look increasingly attractive. But if the fisheries are to be protected, fishermen must work to make government officials aware of the potential damage.

KOMO EDITORIAL . . KOMO Radio and Television offers an opportunity to reply to the views expressed in this editorial to persons or groups representing significant opposing viewpoints.

Editorial STEELHEAD Number E-17
Date ~~6-30-81~~ Time ~~PM Radio/TV~~
7-01-81 AM Radio

RECEIVED JUL 1 4 1981

SHOULD THE STEELHEAD, THE MOST SOUGHT AFTER GAME FISH IN THE PACIFIC NORTHWEST, BE DECOMMERCIALIZED? WE SAY NO. THIS WEEK'S CONGRESSIONAL HEARINGS INDICATE IT'S AN ISSUE THAT'S CAUSING TEMPERS TO FLARE AND VERBAL POTSHOTS TO FLY.

SPORTS FISHERMEN, ARMED WITH A HOOK AND A LINE, SAY THE FIESTY STEELHEAD IS BEING FISHED OUT OF EXISTENCE BY COMMERCIAL METHODS. THEY SAY THE INDIANS GILLNET LEAVES LITTLE TO SPORT OR TO CHANCE.

BUT THE INDIANS SAY COMMERCIAL FISHING IS THE BASIS OF THEIR ECONOMIC SURVIVAL -- A LIFESTYLE GUARANTEED BY TREATY RIGHTS STEMMING BACK TO THE EIGHTEEN FIFTIES.

AS WE SEE IT, ANY ATTEMPT TO REMOVE THESE PREVIOUSLY AGREED UPON RIGHTS IS A DIRECT ATTACK ON THE TREATIES AND THE BOLDT DECISION. IT'S A TEARING APART OF AGREEMENTS THAT IN NO WAY CAN BE MADE UP BY FINANCIAL COMPENSATION.

SO WHEN IT COMES DOWN TO A QUESTION OF STEELHEAD FISHING AS RECREATION OR STEELHEAD FISHING AS ECONOMICS, IT'S GOT TO BE ECONOMICS. INDIANS MUST BE ALLOWED TO CONTINUE COMMERCIAL STEELHEAD FISHING.

Northwest Indian Fisheries Commission
RECEIVED

KOMO Radio 1000 on the dial • KOMO-TV Channel 4 • ABC Affiliates / 100 Fourth Avenue North, Seattle, Washington 98109 (206) 223-4000

10 November 1981

Honorable John Melcher
Member, Select Committee on
Indian Affairs
United States Senate
Washington, D.C., 20510

RECD NOV 17 1981

Re: S 874

Dear Senator Melcher:

Enclosed is the information on the illegal sale of steelhead from the Chehalis River located in the U.S. v Washington case area. The letter to the Prosecuting Attorney plus the listing of exhibits reasonably well explain the situation. The memo indicates the pounds of steelhead shipped. 13,887 pounds of steelhead would translate to over 1700 steelhead.

Also enclosed is a copy of the Findings of Fact and Conclusions of Law for a trial necessitated by illegal possession and sale of steelhead. It is my understanding that the first indication of wrong doing came from a check of steelhead found in New York, which were traced back to the fish buyer.

I have been unable to obtain the records of the Mary Settler case. This court action was tried in Oregon and for some reason I'm having a problem getting the information.

Please excuse the lateness of my reply, but I was confined to the house all of October with the flu.

Very truly yours
Ralph W Larson
Natl. SH Trout Comm.

Return

JOHN SPELLMAN
Governor

STATE OF WASHINGTON
DEPARTMENT OF GAME
600 North Capitol Way, GJ-11 • Olympia, Washington 98504 • (206) 753-5700

March 19, 1981

TO: Mr. Curtis M. Janhunen
Prosecuting Attorney
Grays Harbor County
P. O. Box 550
Montesano, WA 98563

SUBJECT: Unlawful Steelhead Purchases and Sales from the Chehalis River by Roy Stritmatter and Violet Starr

FACTS OF CASE

The Chehalis River was closed to the taking of steelhead trout with gill nets and seines by Treaty Indians on January 14, 1981.

Information was received by Special Agent Edward W. Eckhoff, NMFS, that illegal steelhead were being shipped from Washington State into California.

Investigations in California revealed that numerous shipments of steelhead from Washington State were being distributed in California through Charles P. Kearney and Company, Sea Food Brokers, Oakland, CA. These shipments began on January 26, 1981 and continued through March 9, 1981 when Federal Agents seized 773 pounds of steelhead at Oakland, CA. Six of the seized steelhead were marked fish. Four had the adipose fin clipped and two had a ventral fin clipped. The Chehalis River is known to contain steelhead with these marks.

All invoices received from California show Roy Stritmatter, Hoquiam, WA and V. Starr, Oakville, WA as the principals involved in the case.

The carrier shipping all of these steelhead was Darrell Sorenson Transportation Company, P. O. Box 311, Centralia, WA.

On March 12, 1981 Special Agent Eckhoff and Washington State Wildlife Agent Bill Hermes interviewed Darrell Sorenson at Chehalis, WA. Mr. Sorenson stated that he had delivered several shipments of steelhead from Oakville, WA to California between January 26, 1981 and March 9, 1981. He stated that normally Roy Stritmatter would call him personally and say he had some steelhead he wanted shipped from the Oakville Reservation. Sorenson would then send his truck to Oakville and pick up the steelhead. Sorenson stated that on most occasions, Roy Stritmatter would be at the pick up location and even help load the steelhead onto Sorenson's truck. All invoices relating to the shipments were obtained from Sorenson and are attached.

California law requires that all steelhead entering the state must be tagged. California records revealed that no such tags had been sent to Violet Starr, but Roy Stritmatter had received 10,000 tags in January 1981. These tags are non-transferrable. All of the subject fish were tagged as required.

Roy Stritmatter has a permit to buy steelhead, issued by the Washington State Department of Game. Violet Starr has never been issued such a permit. She has historically acted as Stritmatter's agent and submitted steelhead tickets for him on a regular basis until submitting her last ticket on January 16, 1981.

The Oakville Indians were personally served a closure notice for the Chehalis River on January 13, 1981 by Regional Wildlife Agent John Gillespie. Wildlife Agent Ray Kahler personally served the same closure notice on Roy Stritmatter. In addition, Stritmatter was notified of the closure on two separate occasions via telephone by Wildlife Agent Bill Hermes.

Additional evidence will be submitted as it is obtained.

Sincerely yours,

William J. Hermes, Jr.
Wildlife Agent, Dept. of Game
600 North Capitol Way
Olympia, WA 98504
(206) 753-1160

Edward W. Eckhoff
Special Agent, N.M.F.S.
Lund Road
Aberdeen, WA 98520
(206) 538-1376

jm

Enc: Exhibits 1 - 27

EXHIBITS

1. Steelhead Regulations: 77.16.040, WAC 232-12-212, WAC 232-12-213, WAC 232-12-214 and WAC 232-12-215.
2. Director's Order No. 121 - Closing the Chehalis River.
3. WAC 232-32-130 - Closing the Chehalis River effective 6:00 p.m. January 14, 1981.
4. Summary of Steelhead Sales
5. Transaction dated 1-26-81 between Charles P. Kearney, Roy Stritmatter, v. Starr and Standard Fish Company.
6. Transaction dated 1-31-81 between Charles P. Kearney, Roy Stritmatter, V. Starr, Joe Pucci, California Shellfish, A. Paladini, L. Friscia, and Standard Fish Company.
7. Transaction dated 2-2-81 between Charles P. Kearney, Roy Stritmatter, V. Starr, L. Friscia, and Standard Fish Company.
8. Transaction dated 2-7-81 between Charles P. Kearney, Roy Stritmatter, V. Starr, and Standard Fish Company.
9. Transaction dated 2-14-81 between Charles P. Kearney, Roy Stritmatter,. V. Starr, Standard Fish Company and A. Paladini.
10. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to Standard Fish Co., San Francisco, CA dated 2-2-81, 2-7-81, 2-14-81, 2-28-81, 3-2-81, and 3-7-81.
11. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to West Coast Crab Co, Oakland, CA dated 2-17-81 and 2-28-81.
12. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to Joe Pucci, Oakland, CA dated 2-17-81 and 2-28-81.
13. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to Louie Friscia, San Francisco, CA dated 2-2-81, 2-17-81, and 3-7-81.
14. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to A. Paladini, San Francisco, CA dated 2-14-81 and 2-28-81.
15. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to California Shellfish Co., San Francisco, CA dated 2-17-81, 2-28-81 and 3-7-81.

16. Bills of lading from Sorenson Transport Co. showing shipments of steelhead from V. Starr to Central Fish Co., Oakland, CA dated 2-17-81, 2-28-81 and 3-2-81.

17. Consent to search form for search of Sorenson's truck.

18. Declaration of Special Agent Robert Jones, NMFS.

19. Declaration of Peter Chorney, NMFS.

20. Petition and order of sale of steelhead trout.

21. Order directing sale of steelhead trout.

22. Copies of checks and receipts for sale of seized steelhead trout from Standard Fisheries Corp., San Francisco, CA, California Shellfish Co., San Francisco, CA, and Louie Friscia, San Francisco, CA.

23. Copies of photographs of Sorenson's truck, seized fish, and fish boxes.

24. Copy of Department of Commerce seizure tags for two steelhead trout (one with adipose clip and one with ventral clip).

25. Investigative report of W. J. Hermes, Jr.

26. NMFS Initiating Investigative report by Special Agent Edward W. Eckhoff.

27. NMFS Investigative Report by Special Agent Robert Jones.

The originals of all exhibits will be available for trial proceedings.

9-23-81

To: Dave Schultz, Asst. Chief, Wildlife Enf. Div.

From: Bill Hermes, Area Agent.

Subject: Numbers of steelhead Taken From The Chehalis River by Oakville Indians after The Closure on Jan. 14, 1981

We have documents That will prove That 33 deliveries in 10 Shipments occurred between Jan 26, 1981, and Mar. 7, 1981, all originating at Oakville, WA, from V. Starr and all occurring after the Chehalis River Closure. All Shipments went To The State of Calif.

A Total of 13,887 pounds of Fresh in The round Steelhead were Shipped and $44,530.50 Was realized from The Sale.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

GLYNN T. PRICE and
JOHN BROJAC FISH COMPANY,
Plaintiffs,
vs.
WASHINGTON STATE
GAME DEPARTMENT,
Defendants.

NO. 79-2-00187-0

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

THIS MATTER coming on regularly before the court for trial on November 10, 1980, the plaintiffs being present at trial, and represented by their attorney, Bill Tobin, and the defendant being represented by its attorneys, Slade Gorton, Attorney General, and Dennis D. Reynolds, Assistant Attorney General, and the plaintiffs having presented all their testimony and proof, and resting their case, and the defendant having moved to dismiss, pursuant to CR 41(b)(3) on the basis that upon the facts and law the plaintiff has shown no right to relief, and the court having heard all testimony and having weighed and considered the evidence, and deciding to render judgment on the merits against plaintiffs at the close of plaintiffs' case, enters the following:

FINDINGS OF FACT

I.

Glynn T. Price was president of John Brojac Fish Company Incorporated and owned all stock of this corporation during the years 1977 to the present.

II.

On August 18, 1976, the Department of Game issued a Game Fish Buyer's Permit to John Brojac Fish Company. The permit authorized the licensee to purchase, transport, ship, sell, or possess steelhead trout caught in lawful treaty Indian fisheries. Among the terms and conditions of the permit were included a condition that all purchases of Indian caught steelhead be recorded on steelhead receiving tickets, and these tickets be submitted daily to the Department of Game. The permit also informed the permittee that violation of the terms and conditions of the permit or failure to comply with state law would be grounds for cancellation of the permit.

III.

On November 29, 1976, Glynn T. Price was cited in Hadlock, Washington, for the unlawful possession of 14 steelhead. Mr. Price forfeited $200 bail in Port Townsend District Court on April 19, 1977, from charges arising from his citation.

IV.

On March 1, 1977, Glynn T. Price, president of John Brojac Fish Co., Inc., was cited at the company's place of business in Bremerton for failure to fill out steelhead receiving tickets relating to the purchase of 14 steelhead. On March 25 1977, the Bremerton District Court in Kitsap County convicted Mr. Price on this charge.

V.

On April 13, 1976, the Department of Game received a fish ticket from the permittee corporation showing that it had purchased three steelhead taken from the Nisqually River. The fish receipt ticket was received two weeks after the purchase was recorded, a violation of Department of Game rules and regulations and the terms and conditions of the game fish buyer's permit. At the time of the purchase, the Nisqually River was closed by tribal regulation. No charge was filed for a violation of the agency's fish regulations.

VI.

On April 25, 1977, the permitee corporation's game fish buyer's permit was revoked by the Department of Game. This decision was made by the Director of the Department, Mr. Ralph Larson, and the decision was conveyed to Mr. Price by certified letter. Given as reasons for cancellation in the revocation letter were the arrest and later bail forfeiture of November 29, 1976, the arrest and resulting conviction of March 1, 1977, and the April 13, 1976, incident involving the Nisqually River steelhead purchase. In the letter of revocation, the permittee corporation was told that any purchases of steelhead made without the proper permit would be a violation of the regulations of the Department and subject the permittee to arrest and confiscation of any steelhead.

VII.

After the revocation of the permittee corporation's permit, Mr. Price contacted several members of the Department of Game as to reasons for revocation of his permit. On many occasions he, and members of his staff, attempted to contact members of the Department of Game without any favorable result, and without call-backs from his contacts.

The permit, which was revoked on April 25, 1977, would have expired by its own terms on June 30, 1977. No request for a hearing reviewing cancellation of the permit was received by the Department from the permittee corporation. At the time of the revocation of the game fish buyer's permit, the permittee corporation was represented by knowledgeable legal counsel.

VIII.

In the first week of November, 1977, Mr. Price contacted David Schultz, Assistant Director of the Wildlife Management Division of the Department of Game, and requested of Mr.

Schultz that he be considered for reissuance of a game fish buyer's permit. After consulting with the Director, Mr. Schultz responded on November 9, 1977, stating that Mr. Price's application for a license was denied at this time, and a game fish buyer's permit would not be reissued.

The reasons given for denial of the reissuance of the permit included the fact that a prior permit held by the permittee corporation had been revoked, and in addition the Department had received a report dated October 20, 1977, from Wildlife Agent Kenneth Jundt, which documented that Mr. Price was buying steelhead in the name of the permittee corporation despite not having a valid game fish buyer's permit.

IX.

On November 9, 1977, the permittee corporation, through Glynn T. Price, informed the Department of Game by letter that it intended to continue to commercialize in the purchase of steelhead despite lacking the necessary game fish buyer's permit issued by the Department of Game.

X.

Informal efforts to obtain a fish buyer's permit for the corporation continued, after November 9, 1977, including several calls by Mr. Price's attorney to representatives of the Department and the Attorney General's office. In mid-December, 1977, Mr. Price's attorney was informed these informal discussions would not lead to decisions favorable to Mr. Price, and more formal steps were suggested. The informal attempts to obtain a license occurred in part because of the cost of contesting the Department's license decisions and because of the advice of counsel that such a contest would likely not be favorable for the corporation.

XI.

Desite the lack of a valid fish buyer's permit, the permittee corporation continued to commercialize in steelhead through the months of November and December, 1977, and January through February 1, 1978.

XII.

Several citations and convictions resulted because of the commercialization activities of the permittee corporation. On November 13, 1977, charges were filed in the Seattle District Court for commercializing in steelhead without the necessary permit.

Trial on this charge was held in the King County District Court on February 3, 1978. The court heard all testimony, but refused to rule until the license status of the corporation had been determined by the Game Commission. At the trial it was stipulated by the permittee corporation's attorney that the permittee corporation was in possession of steelhead without the proper game fish buyer's permit. This matter was ultimately dismissed.

On December 16, 1977, Mr. Price was arrested at his place of business in Bremerton for unlawful commercialization of steelhead. During the investigation leading to issuance of a citation, Mr. Price was asked to step inside a vehicle for a brief period of time to complete signing the citation. On February 1, 1978, Mr. Price was found guilty of this charge in the Bremerton District Court, and was fined $500, but imposition of the sentence was stayed until a decision in this matter by the Washington State Game Commission. This matter was ultimately dismissed.

On February 1, 1978, Mr. Price was again arrested for illegal commercialization in steelhead. On March 22, 1978, Mr. Price was found guilty in the Bremerton District Court of this charge.

XIII.

In December, 1977, the permittee corporation, through new counsel, again asked for reissuance of its game fish buyer's permit, and further requested a hearing to review the denial of its license application. At the time, attempts were made to place this matter before the Game Commission at its January meeting, but due to conflicts in the schedule of plaintiff's attorney, this matter was delayed until the Game Commission's April 3, 1978, meeting. On April 4, 1978, the Game Commission upheld the refusal to issue the game fish buyer's permit.

XIV.

On June 21, 1978, Mr. Price filed a petition for judicial review with the Thurston County Superior Court, under cause No. 60347, appealing the Game Commission's affirmance of the refusal of the Department of Game to reissue the requested game fish buyer's permit.

On October 8, 1978, Judge Frank E. Baker ordered that Mr. Price should be considered, for purposes of reviewing the administrative decision in this matter, as having a fully valid and existing license to commercialize in game fish until January 6, 1978, and Judge Baker declined to consider as proper reasons for refusing to reissue a permit the fact that Mr. Price had been arrested and convicted in December, 1977, for illegal commercialization. However, Judge Baker nonetheless affirmed the refusal of the Game Commission to reissue the requested game fish buyer's permit.

XV.

During the fall and winter, 1977-78, Game Department officers on several occasions visited the plaintiff's place of business, including both its warehouse and retail store. Plaintiff's employees were upset by these visits. All investigations of plaintiff's business or enforcement actions taken towards the business by the Department of Game, including arrests or prosecutions, were undertaken for the sole reason of enforcing the rules and regulations of the Department or the game laws of the State of Washington. This same policy of enforcement applied to all fish buyers in the State of Washington.

XVI.

In October of 1978, Mr. Price requested a new permit, which would have been granted by the Game Department on the condition that Mr. Price post a $2,000 bond. The plaintiff did not post such a bond nor ask for a hearing contesting the bond condition imposed by the Game Department.

Based upon the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

I.

The court has jurisdiction over the parties and subject matter of this action.

II.

The facts and circumstances of this action do not establish that a tortious interference with plaintiff's fish buying business occurred. Even if so established, the license decisions of the Department of Game and the Game Commission challenged by the plaintiff are immune from suit. The license decisions manifest a reasonable exercise of judgment and discretion by authorized public officials made in the exercise of governmental authority entrusted to them by law and are neither tortious nor actionable.

III.

The license decisions of the Department of Game and the Game Commission were not the proximate cause of any injuries to plaintiff.

IV.

Plaintiff's claim for damages based upon the license decisions of the Department of Game and the Game Commission is barred by their failure to timely invoke available administrative remedies.

V.

Plaintiff's claim for damages based upon the license decisions of the Department of Game and Game Commission is barred by their failure to mitigate damages.

VI.

Plaintiff's claim for damages for malicious prosecution is barred by the immunity enjoyed on the part of the state for the quasi-judicial acts of its employees. Additionally, under the facts and circumstances of this case, there was probable cause to institute criminal proceedings against plaintiff, which actions were done in good faith, without malice. Therefore, the proof does not establish elements of malicious prosecution sufficient to establish actionable conduct regardless of the immunity of the state from such actions.

VII.

Plaintiff's claim for damages for false imprisonment is barred by the immunity enjoyed on the part of the state for the quasi-judicial, discretionary acts of its employees. Additionally, under the facts and circumstances of this case, there was probable cause to briefly confine the plaintiff, Mr. Price. The confinement which occurred was without meaningful infringement of Mr. Price's liberty of movement or freedom of choice and was done in good faith, without malice or for corrupt reasons. Therefore, the proof does not establish elements of false imprisonment sufficient to establish actionable conduct regardless of the immunity of the state from such actions.

VIII.

Plaintiff's claim for damages for harassment arising from the enforcement activities of the Department of Game is barred by the immunity enjoyed on the part of the state for the quasi-judicial, discretionary acts of its employees. The evidence does not establish enforcement activity occurred because of reasons of ill-well toward plaintiff or for other such corrupt or malicious motives.

IX.

The defendant is entitled to a judgment in its favor dismissing plaintiff's complaint with prejudice and should be allowed to recover its costs to be taxed herein.

DONE IN OPEN COURT this 10 day of Feb, 1981.

/s/
CAROL FULLER, JUDGE

PRESENTED BY:

SLADE GORTON
Attorney General

/s/
DENNIS D. REYNOLDS
Assistant Attorney General

APPROVED AS TO FORM

/s/
BILL TOBIN
Attorney at Law
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

THE STATE OF OREGON, ex rel
MICHAEL D. SCHRUNK, District
Attorney for Multnomah County,

Plaintiff,

No. A 8010-05616

v.

DEFAULT ORDER AND
JUDGMENT

MARY SETTLER,

Defendant.

IT APPEARING from the records and files herein that the above-named defendant was duly and regularly served with Summons and Complaint in the above-entitled cause in the manner prescribed by law, that the time for answering has expired, but that the defendant has not answered or otherwise appeared herein; and evidence oral and documentary having been duly introduced by said plaintiff and duly submitted to the Court for consideration and decision, and the Court having duly considered same, and good cause appearing therefore; now, therefore, the Court finds and declares the defendant to be in default herein, and

IT IS ORDERED AND ADJUDGED that plaintiff recover from and have judgment against said defaulting defendant for the following sums, to-wit: $292,478.45 general damages and $500,000 exemplary damages, with interest thereon, at the rate of nine per cent (9%) per annum from the day of entry of this judgment, until paid, together with costs and disbursements herein, taxed at $__________.

Dated this 12th day of April, 1981.

HERBERT M. SCHWAB, Judge

FL:ML:mg

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

THE STATE OF OREGON, ex rel
MICHAEL D. SCHRUNK, District
Attorney for Multnomah County,
Oregon,

Plaintiff,

v.

MARY SETTLER,

Defendant.

No. A 8010-05616

AMENDED COMPLAINT:
CIVIL ACTION FOR
CONVERSION

Plaintiff alleges:

I

Michael D. Schrunk, the duly elected, qualified and acting District Attorney for Multnomah County, Oregon, brings this action on behalf of the State of Oregon.

II

Michael D. Schrunk, District Attorney for Multnomah County, Oregon, further brings this action on behalf of the State of Oregon as parens patriae and to protect the public trust.

III

At all material times mentioned herein, and in particular between April 1, 1978, and August 15, 1978, plaintiff was, and still is, the owner and was, and still is, entitled to the immediate possession of the following personal property, namely: fish, including salmon 15 inches in length or longer, which were held in trust for the benefit of the people of the State of Oregon.

////

IV

Between April 1, 1978, and August 15, 1978, the above-mentioned property had a value of $292,478.45.

V

Between April 1, 1978, and August 15, 1978, and in Multnomah County, Oregon, defendant wrongfully took and carried away said property and converted the same to her own use.

VI

Plaintiff did not make a demand on defendant for the return of the above-mentioned property because, prior to the date plaintiff had notice of the foregoing facts, defendant had sold all of the property.

VII

On or about October 17, 1979, in Multnomah County, Oregon, defendant was convicted on her pleas of guilty to the felonies of Possessing, Selling and Transporting Food Fish in Closed Season in that she did on April 25 and 26, 1978; May 9, 1978; June 25 and 26, 1978; July 20 and 21, 1978; and August 9 through August 11, 1978, unlawfully possess, sell and transport food fish in closed season.

VIII

At the time defendant converted the property, defendant was guilty of malice and a willful and wanton disregard for the rights of plaintiff, and by reason of these acts plaintiff seeks exemplary damages in the amount of $500,000.

////

////

////

WHEREFORE, plaintiff prays for judgment against defendant in the amount of $292,478.45 general damages and $500,000 exemplary damages and its costs and disbursements incurred herein.

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

By ____________________
Michael S. Loy Bar #76227
Deputy District Attorney

Of Attorneys for Plaintiff
600 Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204
Telephone: 248-3162

STATE OF OREGON)
: ss.
County of Multnomah)

I, MICHAEL S. LOY, being first duly sworn, say that I am of attorneys for the State of Oregon, Plaintiff, in the within entitled cause and that the foregoing Civil Action for Conversion is true as I verily believe.

____
MICHAEL S. LOY

SUBSCRIBED AND SWORN to before me this ________ day of March, 1981.

____
Notary Public for Oregon
My Commission expires: ____________

REC'D OCT 5 1981

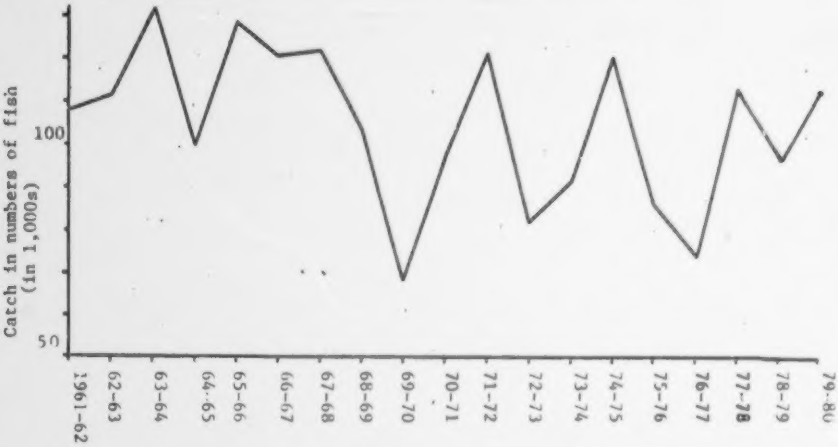
MAKAH TRIBAL COUNCIL
P.O. BOX 115 · NEAH BAY, WA. 98357 · 206-645-2205

September 28, 1981

STATEMENT OF MAKAH INDIAN TRIBE
RE: STEELHEAD DECOMMERCIALIZATION BILL
S.874

Commercial steelhead fishing, guaranteed by our treaty with the United States of 1855, is vital to the Makah Tribe. The Makah people have been dependent on fishing for steelhead and other fish since time immemorial, and fishing is still the most important livelihood for our people. We therefore appreciate this opportunity to comment concerning the Steelhead Decommercialization Bill, a Bill which would abrogate our Treaty in order to benefit the sportsmen of Washington State. Apparently, some value fishing for fun more than fishing for necessity, to earn a living and put food on our families' tables. We, of course, do not share that view.

This Bill has been cynically presented by its supporters as a conservation measure. This is hypocrisy. The steelhead is not endangered. The facts show that there is no decline in the steelhead population. Indeed, the current trend is upward:[1]



This chart shows the total picture, rather than the distorted picture provided by the supporters of the Bill, and it shows that the steelhead stocks are healthy and subject to normal annual variations in harvest.

The supporters of this Bill also claim that the tribes are harvesting more than their share of the steelhead. Again, this is untrue. The following table compares the treaty Indian catch with the non-Indian sport catch:

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[1] Data through 1977-78 based on compilation of Mike Grayum, Northwest Indian Fisheries Commission, with catch data provided by the Washington Department of Game and Indian Commercial Landing data from the U.S. Fish and Wildlife Service; data for 1978-79 and 1979-80 compiled by Al Hartt on the basis of personal communication with William Freeman, Washington Department of Game, September 22, 1981.

Steelhead Catch in Puget Sound and Coastal Areas of Washington

Catch in Numbers of Fish (in Thousands)[2]/[3]/

	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80	Six-year mean
Indian [4]/	61.4	57.0	42.5	49.7	49.5	51.7	52.0
Non-Indian [5]/	58.3	28.3	33.1	72.9	48.3	61.8	50.4
Total	119.7	85.3	75.6	122.6	97.8	113.5	102.4
% Indian	51.3	66.8	56.2	40.5	50.6	45.6	50.8

There are undoubtedly particular streams in which steelhead harvests have declined (as demonstrated above, this is the exception rather than the rule). These declines cannot be blamed on treaty fishermen, as the supporters of this Bill claim. The facts show that the true causes are logging, dams, hydroelectric projects, destruction of the watersheds, alteration of stream courses and beds, chemical and thermal pollution, and other practices which degrade the environment and destroy steelhead spawning habitat.

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[2]/ These data are cumulative catches for the U.S. v. Washington case area only. This includes all of Puget Sound and Washington coastal areas north of and including Grays Harbor.

[3]/ Data through 1977-78 based on letter from James Heckman, Northwest Indian Fisheries Commission, to Congressman Mike Lowry, January 25, 1980; later data compiled by Al Hartt on the basis of personal communication with William Freeman, Washington Department of Game, September 22, 1981.

[4]/ Although significant catch did occur on-reservation prior to 1974, accurate estimates of treaty Indian catch are not available. All tribal data was compiled by the U.S. Fish and Wildlife Service and does not include subsistence and ceremonial catch.

[5]/ The data presented reflects Washington Department of Game's estimates of sport catch in major streams and rivers for 1974-76. Specific data for many minor streams are not available for these years; however, the average annual catch in these streams totals less than 3000 fish. The 1976-77 through 1979-80 data include all case area fish.

The supporters of this Bill also conveniently ignore the fact that steelhead are very hardy and easily enhanced. The tribes and the State are working to enhance the steelhead resources. With continuing improvement in the state of the art, the prognosis is larger catches throughout the case area.

There has been much manipulation of statistics by the supporters of this Bill[6]/, but we know of no evidence proving that federal court decisions upholding Indian treaty rights have harmed the fish runs. The opposite will prove to be true, for we now see greatly expanded management programs as a result of the Boldt decision, programs which collect broad based data and utilize scientific and computerized analysis techniques to manage the fisheries in the interest of true conservation. Like other tribes, the Makah Tribe has developed a modern and scientific fisheries management program, with two

6/ For example, supporters of the Bill have used catch data from selected rivers in which treaty fishermen predominate in order to make it appear that Indians are taking more than their share. Thus, they ignored rivers dominated by non-Indian sportsmen during 1974-75 through 1977-78, such as the Clallam (non-Indian catch: 86%), the Lyre (97%), the Puyallup (57%), the Pysht (71%), the Samish (95%), and the Snohomish-Stillaguamish River system (81%). The table on page 3 of this testimony reveals the distortion and shows that Indians took 50.8% of the steelhead from 1974-75 through 1979-80--as precise an allocation as modern fisheries management can achieve.

fulltime professional biologists, computer analysis, and 24-hour enforcement patrols. Moreover, the supporters of this Bill neglect to point out that under Phase II of the Boldt decision, anadromous species are protected from environmental degradation. Abrogation of Indian treaty rights to steelhead would remove this species from this important and unique protection. The supporters of the Bill also fail to mention the efforts of the tribes to enhance the resource. For example, we are currently constructing the Makah National Fish Hatchery which will be used to enhance many anadromous species, including steelhead.

The Makah Tribe was a party to the years of litigation in United States v. Washington. We were led to believe that by working within the system, by taking our fight all the way to the United States Supreme Court, we would settle forever our rights to fish under our Treaty. Now we see that the man who led an unsuccessful crusade to beat us in court wants to exploit our lack of political power in Congress so that his constituency can take the fish which were guaranteed to us by the United States by solemn promises made on the treaty grounds. Obviously, he and some of the sportsmen are determined to spawn another decade of litigation, for this Bill will do just that. We believe Congress will exercise better judgment.

Of course, many sports fishermen recognize that Indian treaty rights should be honored. However, a vocal and well-financed minority has been clamoring to take away our rights for years. Indeed, this Bill is just the latest in a long line of bills supported by this lobby and introduced to steal our rights. Congress has wisely chosen to reject each of these bills and shown its commitment to honor the nation's obligations under Indian treaties. In fact, Congress just acted to solve the Northwest fisheries controversy by enacting a bill to enhance anadromous fish resources. Apparently, these efforts were not enough to satisfy this lobby purporting to speak for all sportsmen.

Our reservation is economically depressed. We are an isolated community, far removed from industrial and commercial centers and must endure chronic unemployment at levels as high as an alarming 40 percent. This has made the steelhead especially vital to our people, for the steelhead is unique in providing a source of income during the long winter months. This is what the Bill would take away and devote to the pleasure of sportsmen.

Perhaps the most insufferable tactic of the supporters of this Bill is the claim that it does not abrogate treaty rights. This misleading nonsense obscures the truth. Our treaty guarantees us an opportunity to take approximately one-half of each run of anadromous fish passing through our traditional fishing grounds. All who have read the Bill can see that it would violate that guarantee.

The Bill would also authorize tribes to sue the United States in the Court of Claims for money damages for the fishing rights taken away by the Bill. We suppose this was cleverly inserted to soothe the conscience of those who would feel guilty about turning their backs upon promises made to Indians. But our treaty rights are not for sale. Our treaty fishing rights are our birthright, they are central to our culture and our identity as a people. Would you sell your right to vote? Your right to speak freely? Your right to an equal education for your children? These rights cannot be bought and sold.

The Constitution allows rights to be condemned for a public purpose, but not for a private purpose, for that would be no more than a transfer of rights from a politically weak group to a more powerful group. This Bill would condemn our rights and only some of the sportsmen would benefit. The title of the Bill hides this reality. It is more honest to call everything by its right name, for to do less is contemptuous of Congress and exploits our political process. The Bill should be renamed the "Sportsmen's Special Benefit Bill", because it is intended to do no more than confer a benefit on a special interest group. It must be remembered that the sports fishermen are already guaranteed a full 50% of the available steelhead under the Boldt decision.

The additional benefits sought by this sportsmen's lobby of Washington State will be very expensive to our country, for if the Bill is passed and upheld by the courts, the damages in the Court of Claims would be enormous. Nor can we enjoy the prospects of a suit in the Court of Claims. Even if we were willing to trade our fishing rights for money damages, the benefits of such suits might prove to be an illusion. The Makah Tribe sued the United States in the Court of Claims in 1950, and the case is still being fought.

Other than the right to sue, the Bill gives nothing to the tribes in return. It purports to give tribes the right to license non-Indian sportsmen fishing on reservations, but tribes have this right today. The Bill compounds this hypocrisy by directing the Court of Claims to deduct the value of the supposedly new licensing right from the value of the fishing rights taken away.

The tribes gave up vast areas in exchange for relatively small parcels of land and rights to fish at their traditional grounds. The Supreme Court has ruled on the extent of those rights, and found that the United States promised that the Indians would have an opportunity to take approximately one-half of each run of anadromous fish passing through their usual and accustomed fishing grounds. We urge Congress to reject this invitation to break that promise. No one will benefit but the special interest group, and the price to the country will be great, both in money and dishonor.

MAKAH TRIBAL COUNCIL

Hank Wachendorf, Chairman

MAKAH TRIBAL COUNCIL
P.O. BOX 115 · NEAH BAY, WA. 98357 · 206-645-2205

September 28, 1981

SUPPLEMENTAL STATEMENT
MAKAH INDIAN TRIBE
RE: STEELHEAD DECOMMERCIALIZATION BILL
S. 874

The Makah Indian Tribe has historically fished for steelhead along with the other species of salmon in the Tribe's usual and accustomed river areas on the Pacific Ocean and the Strait of Juan de Fuca. Because of our unique geographical location we are concerned with steelhead management in the northern Washington coastal streams as well as in the Strait of Juan de Fuca which, for fisheries management purposes, is included with Puget Sound.

Although steelhead may be less abundant in Makah streams than in streams of some other Indian tribes, steelhead are nevertheless important to our river fishermen during the winter season and are an important part of the Makah culture. Consequently, the Makahs strenuously oppose the decommercialization of steelhead and support all other tribes on this issue. We maintain that this effort to decommercialize the steelhead trout is purely political and is an attempt by the sportsfishermen to reserve the resource for their own exclusive use.

A major argument being used by the decommercialization group is that the steelhead resource is declining and that this decline is due to Indian gillnet fishing in the rivers. This is a false and misleading allegation not supported by the facts. Publicly available steelhead catch records clearly show that the steelhead resource in the treaty case area is in healthy condition and there is no hint of a decline since implementation of the 1974 Boldt decision on Indian treaty rights.

Table 1 attached, summarizes the Indian and non-Indian steelhead catches in United States v. Washington case area waters for the years 1974-75 through 1979-80 with subdivisions for Puget Sound and coastal rivers. The total steelhead catch in the Puget Sound area for example ranged from 55,000 to 89,000 during this six-year period. The average catch was 71,000. The year-to-year variation shows no particular trend but rather shows a typical annual variation to be expected in any biological organism.

The proportion of steelhead caught by treaty Indians during this period ranged from a high of 58.6% to a low of 27.6%. Overall the tribal catch averaged 41.2% or about 10% less than what is guaranteed under the treaties with the United States. Thus, it is clear that the steelhead resource in Puget Sound has remained stable during the years following implementation of the Boldt decision. There is no hint that Indian net fishing has "damaged" the resource. Whether a fish is caught by a gillnet or by hook and line is immaterial as far as impact on the resource is concerned.

Steelhead catches in the coastal areas, as shown in Table 1, are about half as large as those in Puget Sound but the trend over the same six-year period shows no evidence of decline. The average total catch per year was 31,500 steelhead of which the Indian catch averaged 72.3%. The greater percentage caught by the treaty tribes in the coastal areas is due to the fact that some coastal steelhead rivers are essentially located on Indian reservations and are therefore fished almost exclusively by the reservation tribes.

Table 1 also shows the total steelhead catch in the case area for the six years since the Boldt decision. No dramatic downward trend is evident. The overall tribal catch was 50.8%, which almost precisely equals the 50/50 distribution mandated by Judge Boldt.

The tabular data presented in Table 1 is represented in bar graph form in Figure 1. Figure 1 clearly shows that the steelhead resource is in good condition and that there is no hint of a downward trend. Credit for this healthy state of affairs must go to the Washington State Department of Game as well as to the treaty Indian tribes, both of whom are steadily increasing their efforts to implement research, management and enhancement programs for steelhead to the benefit of both tribal and recreational fishermen.

It should be pointed out that the steelhead species is a very hardy and resilient species that can tolerate a wide range of stream and estuarine conditions. Both winter and summer runs extend over long time periods. In addition, the steelhead species is very amenable to artificial propagation and enhancement compared to salmon. As a result, the outlook for the future of steelhead in Washington state is very bright and with the planned expansion of tribal and state steelhead enhancement programs an increase in future runs is assured.

Table 2 shows the catch and escapement in the Sooes and Hoko Rivers respectively for the years 1974-75 through 1980-81. These are the two major steelhead streams that are fished by Makah treaty fishermen. The catch figures include only tribal catches. Sport catches are small in these rivers and comparable figures are not available for all years.

Referring first to the Sooes River, note in Table 2 that steelhead catches have been increasing rather than decreasing in recent years. Escapements, based on surveys by the Makah Fisheries Management Department, were 260 steelhead in 1979-80, and 635 in 1980-81. Total runs were 419 and 921 in the same years respectively. Runs of this magnitude in a small stream such as the Sooes are excellent and indicate a strong and healthy resource. It is important to add that these fish are natural spawners rather than planted fish which makes the data even more remarkable.

The data for the Hoko River indicates a steelhead catch of 759 in 1974-75 and 136 in 1977-78, followed by a steady increase up to 434 in 1980-81. These catches probably do not reflect the true strength of the runs in the respective years. The catches are a function of opportunity, and throughout this time period the number of fishing days and the number of river miles open to treaty fishing varied considerably. It would be impossible to estimate the actual abundance of these fish based on tribal catch data alone.

Beginning in 1977-78, however, the river fishing area was restricted to the first mile and a half upstream from the river mouth and the number of fishing days was regulated by the Makah Fisheries Management Department in consultation with the Washington State Department of Game. Qualitative escapement data were obtained in 1977-78 and 1978-79 but not until the 1979-80 season were the surveys systematic enough to provide a good estimate of the spawning population.

In 1979-80 the steelhead catch was 304 and the escapement was 848 spawners for a total steelhead run of 1,152. This figure does not include the sport fishing catch. In 1980-81 the Makah steelhead catch increased to 434 and the escapement estimate was 908 spawners for a total run of 1,342, again, excluding the sport catch.

An important conclusion that can be made from the data shown in Table 2 is that the spawning escapement in both these relatively small streams is excellent, if not excessive. As the data base is continued for several more years we will be better able to relate the returning runs to the spawning escapement estimates. We will then be able to more precisely determine the appropriate escapement levels. At this time it can be stated that the number of spawning nests per mile in these streams compares very favorably with the number of spawning nests in some of the better producing streams in the state. The Makah Tribal Fisheries Management Department is working closely with the Washington Department of Game in monitoring the catch and escapement levels in these streams as well as other streams in the area. Our prime concern is to harvest at a level which will optimize the catch while still providing adequate spawning escapements.

The above information verifies the Tribe's contention that in the treaty case area as a whole the steelhead resource is in very healthy condition and in the rivers of the Makah Tribe in particular there is virtually no cause for concern regarding the future strength of the steelhead resource. In fact, implementation of the treaty fishing rights of the Indian tribes has improved the data base for managing the resource rather than causing a decline in the resource as alleged by the Bill's supporters.

Finally, the Makah National Fish Hatchery located on the Makah Indian Reservation was just completed this summer and will begin to take steelhead eggs in the winter of 1981-82. This important project of the Makah Indian Tribe will help to further enhance the steelhead runs in all rivers of the northwest Olympic Peninsula and the plantings from the hatchery are expected to directly increase steelhead catches by both treaty and sport fishermen.

Allan Hartt by [illegible]

Allan Hartt, Director, Makah
Fisheries Management Department

Attachments: Tables 1 and 2
Figure 1

Table 1 - Steelhead Catches-U.S. vs. Washington Case
Area 1974/75-1979/80 in Thousands of Fish

Puget Sound	1974/5	1975/6	1976/7	1977/8	1978/9	1979/80	6 Year Mean
Indian	35.1	32.3	22.5	24.7	29.4	31.1	29.2
Non-Indian	46.6	22.8	28.2	64.9	39.6	48.2	41.7
Total	81.7	55.1	50.7	89.6	69.0	79.3	70.9
% Indian	43.0	58.6	44.4	27.6	42.6	39.2	41.2
Coastal							
Indian	26.3	24.7	20.0	25.0	20.1	20.6	22.8
Non-Indian	11.7	5.5	4.9	8.0	8.7	13.6	8.7
Total	38.0	30.2	24.9	33.0	28.8	34.2	31.5
% Indian	69.2	81.8	80.3	75.8	69.9	60.2	72.3
Total Case Area							
Indian	61.4	57.0	42.5	49.7	49.5	51.7	52.0
Non-Indian	58.3	28.3	33.1	72.9	48.3	61.8	50.4
Total	119.7	85.3	75.6	122.6	97.8	113.5	102.4
% Indian	51.3	66.8	56.2	40.5	50.6	45.6	50.8

Sources - 1974/5 through 1977/8 from NWIFC Table in letter from J. Heckman to M. Lowry Dated 1/25/80.

- 1978/9, 1979/80 from Washington Department of Game unpublished data.

Table 2 - Sooes & Hoko River Tribal Steelhead Catches
and Escapement Estimates - 1974-1981
(not including sport catch)

Year	Sooes River			Hoko River		
	Catch	Escap.	Total	Catch	Escap.	Total
1974 75	20	?	-	759	?	-
1975 76	101	?	-	629	?	-
1976 77	49	?	-	282	?	-
1977 78	31	?	-	136	?	-
1978 79	110	?	-	192	?	-
1979 80	159	260	419	304	848	1,152
1980 81	286	635	921	434	908	1,342

Sources - Hoko River catches 1974-1978 Table Dated 6/6/79 by NWIFC(from WDG data) contained in letter J. Heckman to Congressman M. Lowry 6/25/80. 1979,1980 catch & escapement data from Makah Fisheries Management Department data.

- Sooes River catches & escapements from Makah Fisheries Management Department data.

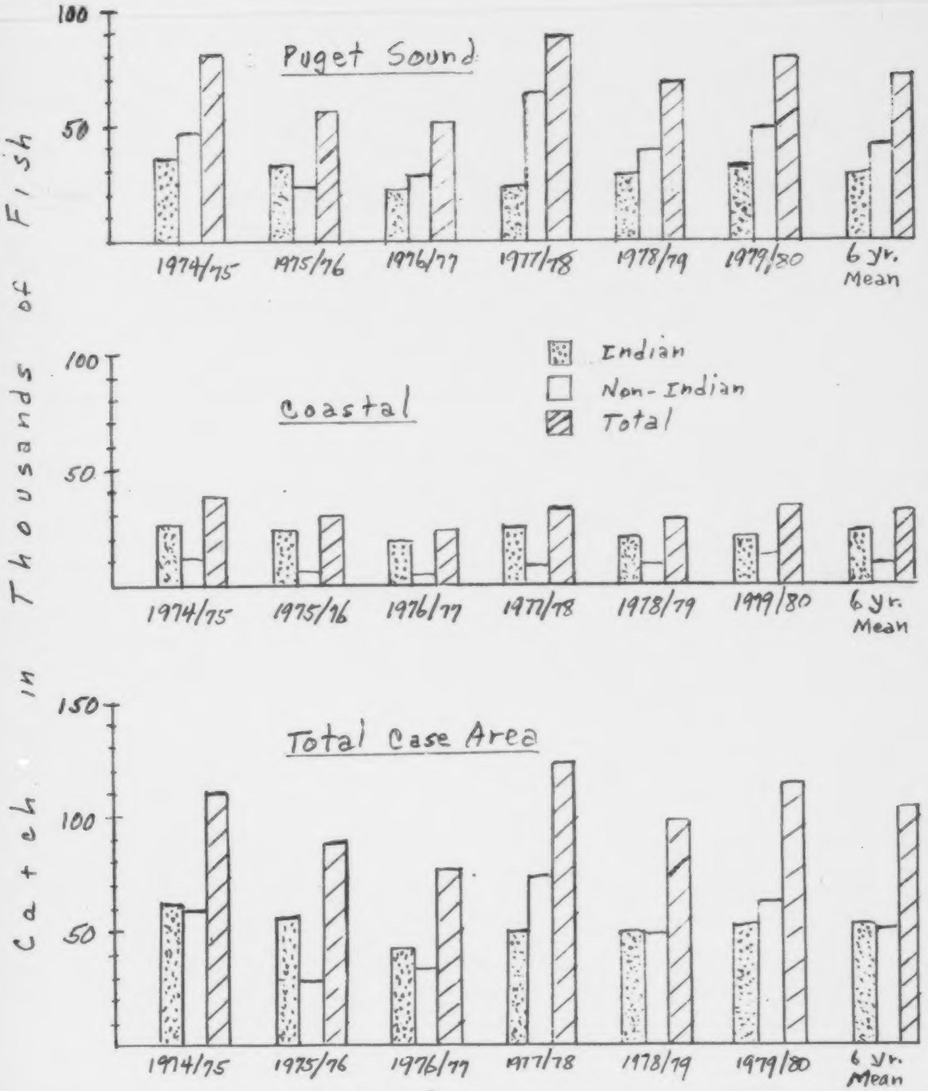

Fig. 1 Steelhead Catches - Case Area 1974/5 - 1979/80

ACH 9/81

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

TESTIMONY BY

MUCKLESHOOT INDIAN TRIBE

BEFORE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

SENATE BILL 874

DECOMMERCIALIZATION OF STEELHEAD

TO

TREATY INDIAN TRIBES

September 1981

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

Honorary members of the Senate Select Committee on Indian Affairs, my name is Gilbert D. KingGeorge, I am the Chairman of the Muckleshoot Indian Tribe. Our tribe is opposed to Senate Bill 874 proposed legislation to Decommercialize Steelhead to Treaty Indian Tribes. Passage of the Conservation and Enhancement of the Salmon and Steelhead Bill by the 96th Congress is already in affect presently.

In order to acquaint you with our tribal position we must first have a historical review of our tribe and issues leading up to the fisheries problems of the Muckleshoot Indian Tribe.

Our tribe has usual and accustomed fishing grounds in the greater Seattle area which includes three (3) major drainage systems: Lake Washington, Duwamish/Green River, White/Upper Puyallup River and the Saltwater of the Puget Sound. The Muckleshoot Indian Tribe is included in two Stevens Treaties negotiated with the United States: The Treaty of Medicine Creek negotiated December 26, 1854 and the Treaty of Point Elliott negotiated January 22, 1855. Ancestors of our tribe prior, during and after treaty times caught Chinook, Coho, KoKanee, Sockeye, Chum, Pink Salmon and Steelhead which they ate fresh and cured for winter consumption and for exchange and trade.

Environmental degradation, since treaty times, particularly to our On-Reservation fishery in the White River system has affected the availability of Salmon and Steelhead to our tribal fishery. Flood control dams, water diversions, silt, spawning bed damages, lack of adequate water flow, lack of fish passage ways through these barriers has drastic affects to our systems. These environmental changes along with prior interceptions, over harvests of our Salmon and Steelhead prior to 1974, has impacted our resource and the availability to harvest by our tribe in our usual and accustomed fishing places.

The Muckleshoot Indian Tribe along with other treaty tribes led the fight for our fishing rights by "fish ins" in the 1960's which eventually led to United States vs Washington, February 12, 1974. All major portions was upheld by the United States Supreme Court, July 2, 1979.

The fishing controversy in the Northwest resulted with the foregoing judicial rulings of the 1970's. Federal District Court Judge George Boldt, after four years of hearings and expert testimony, ruled in Phase I, that treaty tribes were intitled to 50% of the fish runs to their usual and accustomed fishing grounds. This decision, despite adverse publicity, has stemmed the tide of our fishery decline and addressed the Environmental affects on the fishery (Phase II) in our usual and accustomed grounds. Misinterpretation and misunderstandings of the Stevens Treaties and the interpretations by the judicial rulings of the 1970's created mistrust by concerned parties. Once again, the tribes are forced to the "Halls of Congress" to protect a right reserved under Treaties Congress chose to negotiate to acquire vast amounts of land here in the Pacific Northwest.

Fisheries Management is the key to our tribal successes to curb the decline of our fish runs to our river systems along with the Enhancement and Enforcement of our Tribal regulations. The recent acquisition of a Environmental Biologist will further our efforts in Fisheries. Our tribal Ordinance and regulations govern our fisheries programs and with continued cooperation with State, Federal and Intertribal agencies, our successes in the protection and enhancement of our valuable resources will continue. Steelhead management particularly in the Duwamish/Green River system has achieved success especially in our cooperative data exchange with the Washington State Department of Game. These successes with our professional tribal fisheries technical staff will continue into the future. Senate Bill 874 will negate this cooperative management between State and Tribes and would render future successes in our river systems nearly impossible for Steelhead management.

We have pointed out the importance of the Steelhead management and its ultimate affects on our valuable resource and its' protection. However, it must, be noted that the rights and opportunity to harvest Steelhead, as guaranteed by the Stevens treaties is at stake with Senate Bill 874. The Muckleshoot Indian Tribe considers any modifications, limitations or restrictions or our Steelhead and/or Salmon fishing rights, as agreed upon by the treaty negotiators in the 1800's as an abrogation of the Stevens treaties negotiated with the United State government.

Honorable Senators of the SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, the Muckleshoot Indian Tribe leaves with you the following quotation entitled "Great Nations, like great men keep their word", quoted by the Honorable Justice Hugo Black commenting on Indian treaties:

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

"If the rights of native Americans are not respected, the honor of the United States, and its avowed principles of freedom, due process, and self determination will suffer severly in the eyes of the world community. Only in Indian America are the functions of the schools, Police, hospitals, public works and Social services, Real Estate and even private businesses controlled by the Federal Government and civil empolyees. Our leaders speak to no avail when they espouse human rights of foreign soils while here at home the rights of Native Americans continue to be threatened and ignored."

In closing, we, the Muckleshoot Indian Tribe, ask for your support against Senate Bill 874, which we feel would violate the very treaties made with the United States government in the mid 1800's. Steelhead Decommercialization would be a catastrophe for our tribal fishing rights, opportunity and livelihood of our tribal members. Thank you for your kind attention and invitation to testify before the SENATE SELECT COMMITTEE ON INDIAN AFFAIRS.

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

MUCKLESHOOT TRIBAL COUNCIL

Resolution #81-17-7

Tribal Position

MUCKLESHOOT INDIAN TRIBE
FISHERIES DEPARTMENT
39015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 · (206) 939-3311

UNITED STATES VS WASHINGTON

February 12, 1974

MUCKLESHOOT INDIAN TRIBE

Usual and accustomed

fishing places

Muckleshoot Tribe

"Prior to and during treaty times, the Indian ancestors of the present day Muckleshoot Indians had usual and accustomed fishing places primarily at locations on the upper Puyallup, the Carbon, Stuck, White, Green, Cedar and Black Rivers, the tributaries to these rivers (including Soos Creek, Burns Creek and Newaukum Creek) and Lake Washington, and secondarily in the saltwater of Puget Sound" (384 F.Supp. 367).

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 910 · 1010 Vermont Avenue, N.W. · Washington, D.C. 20005
202 – 376 8617

September 21, 1981

Senator William S. Cohen
2313 Dirksen Senate Office Building
Washington, D.C. 20505

Dear Senator Cohen:

The National Tribal Chairmen's Association, representing Tribal leadership across the nation, is adamantly opposed to S. 874, the Steelhead Trout Protection Act of 1981. This legislation, to be reviewed by the Senate Select Committee on Indian Affairs in a hearing on September 28, is a blatant attempt to abrogate Northwest Indian Tribal treaty rights.

Attached, for your reference, is a resolution passed by the National Tribal Chairmen's Association annual convention in August, 1981. The resolution in very explicit terms opposes consideration of S. 874.

The Supreme Court has upheld twice in the last decade the right of Northwest Indian Tribes to fish commercially and for subsistence and cultural purpose the salmon and steelhead. S. 874 is a legislative maneuver around established law promoted by a select group of non-Indian fishermen to purportedly enhance their recreational luxury.

The legislation has been fallasciously cloaked as a resource conservation measure, but does not address protecting the resource from over-harvest. Instead, the bill seeks to allocate the entire steelhead resource for the recreational enjoyment of a few sportsmen who refuse to share the resource and respect and abide by the law of the land.

The Salmon and Steelhead Conservation and Enhancement Act of 1980, P.L. 96-561 provides a cooperative mechanism for Tribal, State, and Federal managers to improve the fisheries for all user groups. Before any appropriations have been let to implement this legislative attempt to logically and peacefully address the salmon and steelhead promotion, the devisive S. 874 is introduced. We would hope S. 874 is considered to be no more than political chicanery. It is most unfortunate that the Senate Select Committee has been forced to spend valuable time considering it.

We oppose S.874 on legal, moral, and biologically scientific grounds. We would hope that a majority of the Senate Select Committee on Indian Affairs membership agree with our position.

Sincerely,

Elmer M. Savilla
Executive Director

EMS/dbd

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 207 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 – 343-9484

RESOLUTION

No. 8/81-7

WHEREAS: there is being introduced Federal Legislation by Senator Gorton and Representative Don Bonker of Washington State to decommercialize steelhead fishing by the Northwest Treaty Tribes for the pleasure of sportsmen, and

WHEREAS: steelhead fisheries is valued by the Northwest Tribes for culture, religious, subsistence and economic dependence to ensure their traditional way of life, and

WHEREAS: Senate Bill 874 entitled Steelhead Decommercialization Bill and House Bill 2978 is a direct threat to the basic economy of the Northwest Tribes, now

THEREFORE BE IT RESOLVED that the National Tribal Chairmen's Association supports the Northwest Indian Tribes opposition of Senate Bill 874 and House Bill 2978, and

BE IT FURTHER RESOLVED that the National Tribal Chairmen's Association opposes Senate Bill 874 and House Bill 2978 as a threat to Indian Tribes throughout the United States.

CERTIFICATION

The foregoing resolution was duly adopted by the membership of the National Tribal Chairmen's Association in a duly constituted meeting held on the 12th day of August, 1981, at which time a quorum was present.

Phillip Martin
PRESIDENT

ATTEST:

SECRETARY

NATIONAL TRIBAL CHAIRMEN'S
ASSOCIATION

Suite 910 · 1010 Vermont Avenue, N.W. · Washington, D.C. 20005
202 – 376-8617

STATEMENT OF THE
NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
FOR THE RECORD OF THE
SELECT COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
SEPTEMBER 28, 1981,
HEARING ON S. 874,
"THE STEELHEAD TROUT PROTECTION ACT"

The National Tribal Chairmen's Association is organized for the purpose of presenting the views of American Indian people, through the voices of their duly selected Indian governmental leadership, on public policy questions and issues of concern in Indian country involving federal-Indian relations. One such issue -- S. 874, "The Steelhead Trout Protection Act," sponsored by Sen. Slade Gorton (R-Wash.) -- is now before the Senate Select Committee on Indian Affairs, which has the responsibility to advise the Senate on actions it should take when acting in its constitutional role as a part of the Trustee, United States, in regard to national policy explicitly or implicitly affecting Indian nations, tribes, pueblos, bands, communities and individuals.

The NTCA urges the Committee to review S. 874 in light of several factors:

1) the guarantee of the United States Constitution that treaties shall be the supreme law of the land;

2) the solemn promises, honorably made and agreed to in treaties between the Northwest Indian tribes and the federal government, that the United States would protect and defend the Indian traditions and lifestyle, especially in relation to fishing, which was and is the focus of the tribal culture and economy of those who would be affected by the bill;

3) the sad history of post-treaty broken promises and persistent attacks against Indian fishing rights by non-Indians and their governmental and corporate entities which have resulted in more damage to the Indian people than resulted from the pre-treaty era's undisguised warfare -- including changes in health, well-being, life-span, societal

(2)

structures, religious practices and family kinship, all combining to erode the very existence of tribes and their citizenry;

4) the great damage to the Northwest fish which occurred during the decades when Indian people were deprived of fish and when non-Indian people over-harvested, corporations polluted and destroyed and foreign vessels depleted the once-bountiful salmon and steelhead resource;

5) the slow and difficult path through the legal process in search of justice -- seven times before the U. S. Supreme Court in this century, four times since 1968 -- with each court affirmation of the Indian treaty fishing right resulting in another more vociferous attack against the Indian exercise of that right;

6) the sponsor of this bill, as Attorney General of Washington State, led the attack agianst the Indian treaty fishing rights, lost that fight before the Supreme Court and is attempting to use the power of his new position to accomplish in the legislative branch what he failed to do through the judicial process;

7) the tribal management of the fishery resource. the multi-jurisdictional management cooperation and the recent acts of Congress in this area are moving in a positive, beneficial direction for the resource and economies of the entire Northwest, and should be given an opportunity to continue without the added layer of contentiousness and courtroom battles that would result from this bill being seriously considered and passed.

The NTCA urges this Committee to review this history and reject

4

the approach suggested in S. 874. When the United States and the Northwest Tribes entered into treaties, the tribes intended to maintain their identity as cultural fishing societies, reserving for themselves certain portions of their homelands and, importantly, their traditional fishing places; the United States received, and continues to benefit from, the lands ceded by the tribes. The treaties contemplated that the tribes would sustain themselves through the full exercise of their fishing rights. This bill proposes to take away these self-sustaining means, disrupt an essential winter fishery and, thereby, abrogate the intent of the treaties. The courts have clearly and forcefully rejected this approach, consistently affirming the treaties.

> The taking of anadromous fish [steelhead] from usual and accustomed places, the right to which was secured in the Stevens' treaties, constituted both the means of economic livelihood and the foundations of native culture. Reservation of the right to gather food in this fashion protected the Indians' right to maintain essential elements of their way of life, as a complement to the life defined by the permanent homes, allotted farm lands, compulsory education, technical assistance and pecuniary rewards offered in the treaties. Settlement of the West and the rise of industrial America have insignificantly circumscribed the opportunities of members of the Treaty Tribes to fish for subsistence and commerce and to maintain tribal traditions. But the mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged on their honor to uphold.

United States v. Washington,
384 F. Supp., 312, 406-407
(W.D.Wash. 1974)

(4)

The Congress has acted in a consistent manner to reject the approach suggested in S. 874, from the initial ratification of the treaties, through the rejection of similar abrogation measures proposed five times in the past decade, to the actions of the 96th and 97th Congresses to authorize and fund a sound and conciliatory approach to the tribal/state/federal management of the Northwest salmon and steelhead. This bill is of the highest concern to Indian tribes across the country for two reasons: 1) its deleterious effect on the Northwest tribes, and 2) the federal-Indian policy shift its passage would represent. The United States has voiced its policy to the world community of nations, as well as to the Indian nations, stating most clearly its position that the Indian treaties are valid, the fishery resource must be protected and the tribal right to fish for commercial, subsistence and ceremonial purposes is secure, even though the treaty-fishing issue is controverial.

> . . . Indian fishing has been the subject of serious public and political controversy. The Federal Government -- despite tremendous opposition from non-Indian communities -- has used its authority to assert the full range of fishing rights reserved to the tribes when the reservations were created. The government also recognizes the need to protect the resource. The government recognizes the right of these tribes to fish for commercial, as well as for ceremonial and subsistence purposes.
>
> The United States Government has actively sought to protect Indian fisheries from environmental degradation, from the potential negative consequences of non-Indian diversion of waterways for agricultural and industrial purposes, from excessive non-Indian commercial and sport fishing, and from other dangers to the resource.
>
> . . . when litigation cannot be avoided, the Federal Government often asumes trustee responsibility for

(5)

> the defense of Indian treaty rights in the courts. The Federal Government's commitment to protect Indian rights -- even if this would mean confrontation with a state -- is exemplified by an emotionally charged fishing rights dispute in Washington State.
>
> In 1974, a landmark court decision (U.S. v. Washington) was announced, affirming the treaty fishing rights of 19 Northwest Indian tribes. The decision declared these tribes entitled to catch up to half the harvestable fish and to participate jointly with the State of Washington in the management of their fishery resources. State officials, institutions, courts and non-Indian fishers refused to accept and abide by the decision and court orders.
>
> Finally, in the middle of the 1977 fishing season, the federal courts, at the recommendation of the Administration, were forced to take over management of the fishery. Rising to the challenge in the face of massive illegal fishing by non-Indians, strong public emotion and legal obstacles in the State, the federal agencies pooled their resources to aid the federal court in managing the fishery. On July 2, 1979, the Supreme Court ruled that Indian tribes in the Northwest are entitled by treaty to half the harvestable catch, warning State authorities to comply.
>
> -- Commission On Security and Cooperation in Europe, "Fulfilling Our Promises: The United States and the Helsinki Final Act" (Report of November, 1979)

The National Tribal Chairmen's Association opposes S. 874 (NTCA Resolution No. 8/81-7, attached). We urge this Committee to reject this bill and to voice its objection clearly.

Phillip Martin
Phillip Martin
President

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

REC'D OCT [illegible] 1981

STATEMENT ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION
TO THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
97TH CONGRESS, 1ST SESSION
ON S. 874, "STEELHEAD TROUT PROTECTION ACT"
OCTOBER 21, 1981

SUBMITTED BY
DR. JAY D. HAIR, EXECUTIVE VICE PRESIDENT

46th ANNUAL MEETING MARCH 19-21, 1982 Marc Plaza Hotel, Milwaukee, Wisconsin
100% reclaimed paper

On behalf of the National Wildlife Federation ("NWF"), I appreciate the opportunity to present this written statement and respectfully request that it be included in the September 28, 1981, hearing record on S. 874.

INTEREST OF NATIONAL WILDLIFE FEDERATION

NWF is a private, not-for-profit conservation-education organization, with over four million members and supporters, and affiliate organizations in all fifty states, Guam, Puerto Rico, and the Virgin Islands. Many of the members of our affiliate organizations are sportsmen who regularly use and enjoy the fishery and wildlife resources of this nation.

Among sportsmen, the steelhead trout (Salmo gairdnerii) is legendary. Drawn by the steelhead's outstanding sporting qualities, members of our Washington, Oregon, Idaho, and Montana affiliates take to the northwestern rivers in December, January, and February, braving cold water and wind-driven rain, sleet and snow, to enjoy the excitement and the challenge of catching the steelhead trout. The sportsmen's interest in the steelhead is far greater than the catch, though. Sportsmen have been instrumental in the effort to conserve the steelhead. Their license fees and permit fees have provided funds for state hatchery programs and steelhead management efforts. For years and at great expense they have encouraged land use practices that would assure viable habitat for spawning steelhead and fought dams that have destroyed the steelhead's habitat. The attached resolutions, adopted by NWF's affiliates over the years, illustrate our views on this issue.

NWF's primary goal is the conservation of fish and wildlife resources. We also have a strong interest in promoting and protecting the sporting uses of these resources including fishing, hunting, and trapping. Thus, NWF would oppose the commercial use of the steelhead trout if that use threatened the long-term viability of the resource. Moreover, if a choice had to be made between commercial fishing and sport fishing--regardless of who was engaged in the commercial take--NWF would choose sport fishing. However, we do not believe, on the basis of existing data, that such a choice need be made now, especially where decommercialization would require the abrogation of treaty rights declared by the United States Supreme Court.

All conservationists, whether sportsmen, or the Indian tribes, share a common goal: restoration of healthy populations of wild steelhead trout throughout their historic range. Unfortunately, the wild runs have significantly declined over the past several decades primarily because of habitat degradation, but also due to the lack of comprehensive management programs. Due to this decline, the populations are more susceptible to overfishing. We believe, however, that the decline in populations can be reversed and that healthy wild runs, sufficient to satisfy the needs of all users, can be--must be--re-established.

To accomplish this will require immediate attention to the steelhead resource, particularly the implementation of a comprehensive conservation program, including effective management, enhancement, and the mitigation of habitat degradation.

S.874

By focusing exclusively on the allocation of a dwindling resource among competing users, S.874 misses the most urgent problem with this resource: habitat restoration and enhancement. Further, by abrogating treaty obligations before less drastic allocation measures are even attempted, this legislation would eliminate a potentially powerful tool for habitat conservation. Several courts have declared that the existence of these treaty rights compels state and federal agencies to take affirmative steps to protect the resource.

Regarding the long-term conservation needs of the steelhead, for example, S.874 does not provide for steelhead enhancement or habitat mitigation. Furthermore, the management benefits attributed to the bill are uncertain for two reasons: First, although there exists the risk that the highly efficient net fishery used by the tribes could more likely result in an overharvest of steelhead than the sports catch, we are convinced that, if the state exercises the authority given to it by the U.S. Supreme Court to conserve the resource[1], this calamity can be avoided. Significantly, the Court recognized that the 50% share under the Treaty is a maximum, not a minimum, and that the Indian share can be reapportioned as circumstances change.[2]

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[1] United States v. State of Washington, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd 520 F.2d 676, 686 and 687 (9th Cir. 1975), cert. denied 423 U.S. 1086 (1976); Washington v. Fishing Vessel Ass'n, 443 U.S. 658 (1979).

Second, it is not apparent that the current average yearly harvest of steelhead, which currently includes both the sport and tribal commercial fishery, would decline if S. 874 were enacted. It appears that the sports take would largely offset any harvest reductions attributable to cessation of the tribal commercial fishery.

Because management, enhancement, and habitat problems outside the scope of S. 874 are the most serious hurdles standing in the way of healthy wild runs of steelhead, we believe that S. 874 as a measure to address the needs of sportsmen is premature. Therefore, we urge Congress, and this Select Committee in particular, to tackle these problems first. With resources limited as they are, we believe Congress should attack the most pressing conservation problems first. We discuss these problems below. If these efforts fail to increase the numbers of steelhead available for both sport and commercial fishing, or if a reallocation formula cannot be negotiated between the commercial and sport fishing interests, then decommercialization would be a logical action.

FULL FUNDING OF SALMON AND STEELHEAD CONSERVATION AND ENHANCEMENT ACT OF 1980

Last year, Congress enacted the Salmon and Steelhead Conservation and Enhancement Act of 1980 ("SSCEA"), Pub. L. 96-561. The steelhead management and enhancement provisions of the SSCEA, if aggressively pursued and adequately funded by Congress, can save the steelhead wild runs. The SSCEA is designed to encourage the various groups concerned--the Indian tribes, the states, the commercial and recreational fishermen, the regional fishery management councils, and the Federal Government--to formulate responsive plans for the enhancement and management of salmon and steelhead. U.S. Code Congressional and Administrative News ("USCCAN"), 1980, Vol. 6, p. 6795. Management committees established under the SSCEA--which include the states and Tribes--can prepare comprehensive management and enhancement plans for salmon and steelhead. This committee arrangement has the potential to solve steelhead management fragmentation problems.

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[2] See Washington v. Fishing Vessel Ass'n, supra, at 672.

Since the principal elements of management plans include coordinated management, use of the best scientific information and the prevention of overfishing, the SSCEA also has the potential to improve steelhead management. And finally, the SSCEA provides for federal grants for implementation of enhancement plans to any member of the management committee that agrees to the management plan.

The management and enhancement programs of the SSCEA are of no value unless they are funded. Congress authorized the expenditure of 3 million dollars for the establishment of the management committees and the development of the management plans and up to 14 million dollars over a ten-year period to carry out steelhead enhancement programs. But the Administration has recommended zero funding of the SSCEA management program

Contrary to the Administration's wishes, the House Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Subcommittee has budgeted 2 million dollars for the SSCEA. The Senate Committee on State, Justice, and Commerce and the Judiciary and Related Agencies, however, has not funded the SSCEA. We urge this Committee to recommend to the Senate Appropriations Committee that it provide 2 million dollars in FY '82 budget for SSCEA funding.

If the management component of the SSCEA is not adequately funded, formation of the management committee and development of the management plans will be delayed. This in turn would delay implementation of the enhancement provisions of the SSCEA since they cannot be funded until management plans are finalized.

However, even if the management and enhancement programs of the SSCEA are funded, they are unlikely to succeed unless they include research to fill data gaps, including:

1) The status of suitable available habitat, especially gravel spawning areas,
2) The time of spawning and its relationship to stream withdrawals,
3) Escapement levels,
4) Identification of rearing areas used by the steelhead,
5) The timing of smolt migration and its critical relationship to spillage at dams,
6) The number of returning adults,

7) The impact of hatchery enhancement programs on wild runs.[3]

We urge the Senate Select Committee on Indian Affairs to encourage the House and Senate Appropriations Committees to fund the SSCEA at or near the authorized ceiling, to ensure that a portion of these funds be earmarked for research, and to ensure that management plans submitted to the Congress under § 110(c) of the Act include the best scientific information.

MITIGATION

Another area of concern we urge this Committee to consider is environmental degradation.

Federally-built, financed, or licensed dams have been a major contributor to the steelhead's habitat problems. Federal dams on the main-stem Columbia and Snake Rivers, for example, have reduced by one-half the natural habitat available to steelhead runs. In many situations, steelhead smolt migrating to the ocean are ground into chum when passing through turbines of federal hydroelectric dams. Also, fluctuating river flows caused by these dams harm the steelhead. And while the Federal Government has the clear authority to mitigate environmental damage from dam construction under the

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[3] Although little is known of the effects of hatchery fish on wild fish populations, studies indicate that hatchery plants may be harming wild runs by competing for habitat, by interbreeding, and by exposing the wild runs to disease. In certain rivers, including the Skagit, increased hatchery plants seem to coincide with a downward trend in wild populations.

Fish and Wildlife Coordination Act, 16 U.S.C. § 661, et seq., its record of performance in that regard is poor.[4] The Coordination Act requires that mitigation planning be an integral part of project planning and that it be given equal consideration with other project purposes. If the federal agencies responsible for building, financing, or licensing dams had obeyed the procedures established by Congress in the Coordination Act, we would not face the staggering uncompensated loss of steelhead habitat.

Two major factors account for the failure of the Federal Government to adequately mitigate: (1) the lack of a comprehensive, coordinated set of policies and procedures to implement the goals of the Coordination Act, and (2) the failure to include specific mitigation measures in project authorization and appropriations measures.

Although proposed Coordination Act regulations were issued on December 18, 1980, they are caught in Vice President Bush's regulatory review process, from which they may never emerge.

In turn, many federal dams which have harmed the steelhead are subject to the Coordination Act, and thus, may be "retrofit" with mitigation features, such as moving screens to prevent steelhead smolt from passing through turbines. The federal agencies, however, are dragging their feet.

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[4] The failure of the federal water resource development program to mitigate project-induced losses of fish and wildlife resources is well documented. The most recent comprehensive analysis of this problem is contained in the record of the Coordination Act Oversight Hearings before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, 95th Cong., 2d Sess. (Serial No. 95-55) (July 26, 27, August 10, 1978).

We urge this Committee to support funding to complete mitigation plans for existing projects and to implement approved plans.

Last year, Congress tried to tackle the problems that the failure of the Coordination Act caused on the Columbia River system in the Pacific Northwest Power Planning Conservation Act ("PNPPCA"), Pub. L. 96-501. Under the PNPPCA the Northwest Power Planning Council ("Council") is developing a comprehensive program for the protection, mitigation, and enhancement of fish and wildlife resources on the Columbia River and its tributaries, particularly anadromous fish. Hopefully, this fish and wildlife program will result in major improvements in the fish resources of the Columbia River system. Unfortunately, the Council's fish and wildlife program will not apply to coastal and Puget Sound streams and rivers that are important to the steelhead. Steelhead conservation efforts would be bolstered if the fish and wildlife program were expanded to cover the entire Pacific Northwest Region.

BUDGET CUTS

We are alarmed by the growing tendency of the Administration to single out federal fish and wildlife programs to adsorb a wholly disproportionate share of the budget cuts. An example of this that would seriously harm the current anadromous fish hatchery program in the Pacific Northwest, is the recent announcement of the National Oceanic and Atmospheric Administration that it has targeted its Columbia River hatchery program for a 90%

funding reduction from the present funding level of 8.4 million dollars to 800,000 dollars. At least 70% of the present funding is used to operate and maintain fish hatcheries for salmon and steelhead.

The loss of the NOAA hatchery program before implementation of the SSCEA enhancement programs could devastate the steelhead. We urge this Committee to encourage the House and Senate Appropriations Committees to continue funding for these fish hatcheries.

RECOMMENDATIONS

Because we believe that treaty abrogation should be a measure of last resort, and because the State of Washington already has ample legal authority to protect the resource from overexploitation by commercial fishing, and to petition the U.S. District Court to reapportion the sport-commercial take if it can show that the sport fishermen are not getting their fair share, we conclude that S. 874 is premature. Accordingly, we recommend that the following actions be taken immediately and that the question of treaty abrogation be deferred until these measures have been given a chance.

(1) Support funding for formation of management committees and plans under the SSCEA and implementation of that Act;

(2) Support funding of steelhead research under the SSCEA;

(3) Inform the various House and Senate Appropriations Committees of the essential nature of the steelhead enhancement programs and encourage these committees to fund these programs;

(4) Encourage acceleration of the mitigation efforts under the Fish and Wildlife Coordination Act;

(5) Conduct oversight hearings on implementation of the SSCEA, current budget problems, and what the federal dam construction agencies are doing to mitigate damage to the steelhead caused by their dams;

(6) Urge the sportsmen and Indian tribes to negotiate and settle their differences.

CONCLUSION

We believe that if the Congress, the user groups, and the state and federal agencies work together to address the management and environmental needs of the steelhead in a comprehensive manner, there will be sufficient steelhead to meet the needs of all user groups.

National Wildlife Federation

1412 16TH ST., N.W., WASHINGTON, D.C. 20036 202—797-6800

Resolution No. 25

INDIAN TREATY RIGHTS AND CLAIMS

WHEREAS, questions as to the extent and existence of rights guaranteed under Indian treaties have been litigated for years in both federal and state courts with no permanent solution in the foreseeable future; and

WHEREAS, the Indian community, in some instances, has demonstrated inability to properly manage fish and wildlife resources; and

WHEREAS, treaty rights claims made by Indians have already had detrimental effects on some fish stocks in the Great Lakes and the Northwest and land in the Northeast; and

WHEREAS, the Indian community continues to grow more assertive in efforts to gain perceived treaty rights and threatens to involve other natural resources, including wildlife, water, and minerals; and

WHEREAS, control of major portions of these resources by Indian tribes could lead to national crises; and

WHEREAS, the continuation of this controversy can only lead to eroding the level of social acceptance that the Indians have gained over the years, while promoting a role of dual citizenship within the United States;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual meeting assembled March 20-23, 1980, in Miami Beach, Fla., hereby recognizes that the question of Indian treaty rights is an issue of national priority and a concertrated effort should be made toward developing a solution to this issue which best serves the interests of the natural resources and all citizens of this country.

National Wildlife Federation

1412 16TH ST., N.W., WASHINGTON, D.C. 20036 202—797-6800

Resolution No. 36

ANADROMOUS FISH RESTORATION

WHEREAS, salmon and steelhead resources in the upper Columbia River and Snake River tributaries are in a crisis situation; and

WHEREAS, state and federal fisheries agencies are facing severe difficulties in maintaining these valuable resources, with Salmon and Steelhead runs continuing to decline; and

WHEREAS, protection, restoration and enhancement of anadromous and resident fish resources in four Idaho rivers mentioned for studies in current national legislation (S.1635) would result in significant and substantial benefits regional and international in scope;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual meeting assembled March 20-23, 1980, in Miami Beach, Fla., hereby supports the investigations contemplated in legislation (S.1635) currently before the Congress in the belief that salmon and steelhead rehabilitation projects are of major national concern.

National Wildlife Federation

1412 16TH ST., N.W., WASHINGTON, D.C. 20036 202—797-6800

Resolution No. 48

PROTECTION OF COLUMBIA BASIN FISHERY RESOURCES

WHEREAS, the Columbia River chinook salmon and steelhead runs have traditionally been the largest and most valuable segments of the world's largest chinook salmon and steelhead runs; and

WHEREAS, these anadromous fish runs in the upriver Columbia River system have declined to the point of near extinction, and the entire Columbia River fishery is threatened by ever-increasing electric power developments and irrigation withdrawals; and

WHEREAS, for some Columbia upriver fish runs, time is a critical factor; and

WHEREAS, current northwest energy legislation (the Northwest Power Bill) before Congress could provide an effective vehicle for restoring these anadromous fisheries by the inclusion of provisions to insure protection for Columbia River Basin Salmon and steelhead;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation in annual meeting assembled March 20-23, 1980, in Miami Beach, Fla., hereby urges the U. S. Congress and, specifically, congressional committees on power, energy, water and natural resources to include provisions in the Northwest Power/Energy Bill that would establish Columbia River guaranteed minimum streamflows, sufficient to restore and maintain anadromous fish runs; and

BE IT FURTHER RESOLVED that provision be included to fund and establish safe fish-passage facilities at each mainstream dam in the Columbia River Basin for both juvenile downstream migrants and upstream spawning runs; and

Resolution No. 13

COMPARATIVE VALUES OF RECREATIONAL AND COMMERCIAL FISHERIES

WHEREAS, the adverse impact of increased human activities is causing declines in marine fisheries resources and overfishing can result; and

WHEREAS, there is a growing awareness of the value of marine recreational fishing; and

WHEREAS, studies, environmental impact statements, and other reports are being developed to determine comparative values between commercial and recreational fisheries; and

WHEREAS, an accurate assessment of both these values must be considered in the determination of "optimum yield," as required in the Fisheries Conservation and Management Act (P.L.94-265); and

WHEREAS, a recognition of the basic difference between the two fisheries is essential to understand that two separate and different measurements of value are required;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual meeting assembled March 22-25, 1979, in Toronto, Ontario, hereby declares that the recreational fishermans' right of access to publicly-owned fisheries resources is distinct from, and superior to, the privilege granted commercial fishermen to harvest these resources for private profit, and urges that all persons and agencies making assessments of the comparative values of commercial and recreational fisheries clearly acknowledge this distinction; and

BE IT FURTHER RESOLVED that, while fully recognizing the human needs and desires of consumers of fishery products, the National Wildlife Federation urges the adoption of the above policy in management decisions involving all harvestable inland and marine fisheries.

Resolution No. 26

INTENSIVE SALMON AND STEELHEAD MANAGEMENT

WHEREAS, salmonoid fish runs on the Pacific Coast are in serious jeopardy, some to the extent that some runs and species are becoming endangered; and

WHEREAS, these fishes appear to be most seriously impacted by declines in fresh water spawning habitat and commercial overharvest; and

WHEREAS, the management and regulation of these species also suffers from a lack of timely and definitive information regarding abundance and vitality, particularly in the marine environment; and

WHEREAS, too little effort is being made to assess spawning stream conditions, marine and smolt feed abundance, oceanic influences, predation, and the impacts of various fisheries;

WHEREAS, too little effort is being made to identify those responsible for conditions adversely impacting these depressed stocks;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual meeting assembled March 22-25, 1979, in Toronto, Canada, hereby urges the immediate implementation of a more intensive and vigorous program directed toward the conservation, management, and enhancement of Pacific salmon and steelhead runs, an effort to be directed cooperatively by state and federal fisheries agencies, and the Pacific Fishery Management Council with the participation of all other agencies having functions for other uses of natural resources ultimately affecting the habitat of salmonoid fishes;

BE IT FURTHER RESOLVED that this organization urges: 1. a program designed to increase public awareness to the value of the fishery resource and its management problems; 2. efforts to prevent overharvest of the resources, better spawning escapement, and smolt survival; 3. stream improvement projects beneficial to anadromous fish; 4. increased law enforcement at points where fishery regulation violations are likely to occur; and 5. publicly identify developers, projects, and water users that kill fish.

S. 874 STEELHEAD PROTECTION

HONORABLE STATESMAN,
97TH CONGRESS 1ST SESSION
SENATE OF THE UNITED STATES OF AMERICA

REC'D AUG 03 1981

RESPECTFULLY HEAR ME,

I AM, Mr Sampson, of NATIVE AMERICAN PEOPLE, from a family that has 'longivity', and a 'real' understanding of the 'Spirit of Fishing'. I teach my children to respect fish, and not to molest them for amusement. Molesting & Murdering fish for 'sport' is genocide against the fishes, and torments the true Native American Spirit. 'Sport Interests' do not have 'Native American Resource Ethics', and do not understand the factual values of fish. The Sport Fishing Institutes, and the Cooperative Fisheries Units talk of 'sport fisherman's conservation programs', yet this day, the biologists can not present a single principle which will convince true and knowledgeable Native Americans to join them in reckless molest of fish for amusement.

I speak truely and accurately....the purpose of S.874, the steelhead salmon protection act, is not to decommercialize the fish, but rather to, involuntarily subjugate my family's spiritual being to commercial sport interests desires of monopolization.

NWSFA 231959/681
page one - continued

NWSFA 231959/681 - Sampson, S. 874

By involuntarily subjugating my family to commercial sport interest's monopoly, and recreational molest fishing techniques, Mr Gorton; & Jackson; & McClure, are purposing to violate the American Indian Religious Freedoms Act, P.L. 95-341 & Senate Joint Resolution 108, intentionally denying me possession and use of sacred objects in my fishing places, destructing my spiritual personality, and that of my family and the people. This subjugation is manifested ethically, technically, and legally in Senate No. 874, Steelhead Protection Act, P. 1, lines 7, 8; P. 2, lines 1,2,6, 16, 17, 19, 20-22; P. 3, lines 5-9, 14-16, 18, 19, 21-24; P. 4, lines 4-6, 16-19, 20-23; P. 5, lines 1-3, 4-16, 20, 21, 23, 24; P. 6, lines 18, 21-23; P. 7, lines 9-14. I am compelled to request that the appropriate authorities examine the following definition, EXTORTION: getting money, etc. by violence, threats, misuse of authority, etc: sometimes applied to the exaction of too high a price. "Federal agencies are now required by law to respect the customs, ceremonies and traditions of Native American religions" (AMERICAN INDIAN RELIGIOUS FREEDOM ACT REPORT, P.L. 95-341, Federal Agencies Task Force, August 1979).

Respectfully, I Remain,
Mr Butch Sampson
Mr Butch Sampson
Member, NWSFA

English Translation
William Blair Grubb
William Blair Grubb
Co-Chairman,
Northwest Subsistence Fishermans Association
(206-374-6945)

NWSFA 231959/681
page two - end

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Puyallup Nation

Tribal Council

Robert Satiacum
Chairman

Silas A. Cross
Vice Chairman
Roleen Hargrove

Robert C. Dillon

Bill Sterud

SUPPLEMENTAL WRITTEN
TESTIMONY OF THE PUYALLUP
NATION FOR THE RECORD
OF THE SELECT COMMITTEE
ON INDIAN AFFAIRS,
UNITED STATES SENATE,
SEPTEMBER 28, 1981,
HEARING ON S. 874.

To be included as testimony on September 28, 1981.

Oral testimony of Robert Satiacum to the Select Committee on Indian Affairs is attached.

2215 East 32nd Street • Tacoma, Washington 98404 • 206/597-6200

Written Testimony of the Puyallup Nation
To Senate Select Committee
On Indian Affairs

The importance of steelhead or winter salmon to Puyallup Nation fishers cannot be underestimated. The importance of this fish to Native American economic independence has been mentioned before and will be dealt with later in this report.

An aspect of steelhead that seems to receive little attention is the cultural and religious significance of the resource. Historically and even today the return signifies the onset of winter. The steelhead, then, provide evidence of seasonal change with winter being the end of the cycle to be followed by spring or rebirth. Native American religious heritage is well founded in naturalistic/environmental awareness. The steelhead, then, had significance to Puyallup's beyond its need for susteinance.

Historically, the steelhead was an item of barter. Tribal and individual wealth was partially based on stored fish resources. Since the steelhead was the last run of fish before winter, it was the last and most important contributing species taken. As a protein source, steelhead were consumed fresh, smoked, dried, or otherwise cured. Eggs were eaten, and skin, viscera, and skeleton used for the maintenance of everyday life. Stored fish were the singlemost important source of winter protein that allowed Early Puyallups to survive until spring and the return of the Puyallup River Spring Chinook salmon.

The steelhead decommercialization bill has been erroneously labeled and presented as a conservation measure to protect steelhead from decimation. In reality, it is the Tribes which are protecting this resource more than any other group through professional Tribal environmental and fisheries management programs.

The real significance of conservation of natural resources applies to wild populations. In the Puyallup River system, there are both hatchery and wild runs of steelhead. Wild steelhead generally are of a much larger size than hatchery fish since a larger portion of their population spend an additional year in the ocean.

Wild steelhead are obviously more sensitive to environmental degradation. In the Puyallup System, the major environmental degradation has occurred in the form of dams, water diversions, stream channelization, poor logging practices, and pollution. The Electron Diversion Dam, in addition to blocking upstream migration, dewaters the upper mainstem Puyallup to the point where adult steelhead often cannot reach Niessen Creek, and other major steelhead spawning tributaries.

This trend of environmental degradation would probably continue until all wild steelhead are decimated, except that Washington treaty tribes have the only means to halt such destruction of the environment.

Because of differences between run timing in wild and hatchery steelhead, fisheries can be managed to target on hatchery stocks until there are adequate numbers of wild fish to harvest. The Puyallup Nation, manages their tribal fishery in such a manner.

The major portion of tribal harvests occur in December and January, well ahead of the major run timing of the wild population. Samples of Puyallup caught fish are checked by tribal fisheries professional staff to determine hatchery and wild stock composition. For the 1979-80 steelhead fishery, the tribe took the initiative to close their fishery as soon as the samples showed significant numbers of wild fish in the catch. When this biological data was presented to the state biologists, they in turn closed the sport fishery as a conservation measure. In 1981, most of the tribal net fishery occurred in December. Based on scale analysis, most of the fish caught were hatchery origin fish. The sport fishery during that same month showed a ten percent higher composition of wild fish in the catch. This is not surprising as the sport fishery occurs further upstream closer to the natural spawning grounds.

Since tribal fisheries are based on hatchery reared fish, the Puyallup Nation has made major commitments for enhancing the species. In Spring 1981, the tribe released over 60,000 steelhead yearlings into the Puyallup River. This planting level represents approximately two thirds of the Game Department's recent annual planting levels for the Puyallup System. Based on current hatchery survival rates, these releases should contribute approximately 1500 adult steelhead to both the Puyallup River treaty and sport fisheries in 1983. This number of adult steelhead produced from this tribal plant should exceed the total number of steelhead that was harvested by the Tribe in 1980-81. Because of budget constraints, the Game Department has indicated they will have to decrease their current hatchery steelhead production. It's possible that tribal steelhead production may surpass that of the state if the Game Department's budget problems continue. Unlike most species of salmon, steelhead require a minimum of one year to rear to obtain optimum release size. This results in considerable hatchery operations and maintenance expenses.

The loss of steelhead to the treaty commercial fisheries would impose severe hardships to southern Puget Sound tribes. These tribes have been forced into terminal fishing areas and are the last to harvest the salmon resource. By the time the fish reach the terminal areas, the market quality has deteriorated or the price has already dropped because markets have been flooded with northern caught fish. Fortunately, the steelhead retains excellent market qualities in terminal areas, are less suseptable to prior intercepting fisheries, and harvests occur during a time when quality frish fish are a scarcity in the marketplace.

The loss of steelhead to treaty commercial fisheries would shorten an already short fishing season. Contrary to popular belief, Tribes are not fishing all of the time. Most of the salmon resource is harvested before they reach the Tribe's fishing grounds. Salmon runs destined for the Puyallup River must escape the coastal sport and commercial troll fisheries, Puget Sound Treaty and non-treaty Commercial net fisheries, the IPSFC fisheries in the Straits of Juan de Fuca, and the Puget Sound sport fisheries. Since 1975, the Puyallup Nation has fished an average of 32 days per year in the

Puyallup River for all species of salmon (Table 1). Because of similar run timings between hatchery steelhead and natural Puyallup chum salmon, fishing days would be reduced by some twenty-five percent. Decommercialization of steelhead would mean not only the loss of steelhead, but probably the loss of additional species as well, such as, chum salmon and spring and summer chinook.

The State of Washington has interferred with the Tribe's right to fish steelhead through their judidical system. Treaty catches of steelhead in the Puyallup River have been far below the Supreme Court mandated treaty entitlement (Table 2). These low treaty steelhead catches since 1977 have been accompanied by extremely poor chum salmon runs in the the Puyallup River. The Washington Department of Fisheries Progress Report No. 140 predicts that there will be only 800 harvestable chum salmon in the Puyallup River for the 1981-82 fishing season. This decline of chum salmon has been largely due to the destruction of the Puyallup River estuary which is now a highly industrialized Port area. Future fisheries enhancement efforts are likely to be more sucessful for steelhead, than for chum which are highly estuarine dependent. Without adequate harvests of chum salmon during the winter months, the Puyallup Nation has become increasingly more dependent upon their historical steelhead resources.

At one time it was possible for the return of spring chinook to ameliorate some of this dependency. Since the construction of Mud Mountain Dam, the spring chinook run has been decimated. By denying returning spawning adults access to headwaters, this run is approaching extinction. The ability of the Puyallup Nation to

Table 1. Summary of recent historical treaty fishing days in the Puyallup River.

Year	Total Number Of Fishing Days For All Species
1975-76	23
1976-77	14
1977-78	45
1978-79	38
1979-80	26
1980-81	45

Table 2. Comparison of treaty and sport steelhead catches in the Puyallup River.

Year	Sport Catch	Treaty Catch
1974-75	2335 1/	2528
1975-76	1352 1/	3928
1976-77	2544	1688
1977-78	3493	281 2/
1978-79	2272	259 2/
1979-80	1977	43 2/
1980-81	971	1068

1/ Estimates derived from punch cards which are considered less accurate than creel census derived estimates.

2/ Harvests limited to 45% of the wild fish (Wash. Dept. of Game -v- Puyallup Tribe).

rely on this portion of diversified resource has been lost. Puyallup fishers end up with less fish than was mandated or anticipated.

Contemporary Puyallup's continue to observe and appreciate the religious significance of winter salmon. The importance of this resource takes on increased value when understood in the context of its being one of the few ways of obtaining livilihood for the most indigent and underemployed segment of American society. Most Puyallup families are completely dependent on steelhead as a means of acquiring food to eat, either directly or as a source of funds for other necessary staples, during the winter months.

In summary, the Tribes have shown through their environmental and fisheries management that they are more effective in protecting the wild steelhead than any other group or resources agency. This is nothing new as the Tribes have been practicing conservation for centuries by living in harmony with the environment. Puyallup Nation fishers will continue to be dependent upon steelhead as a source of food and income during winter months. This dependency has become especially critical as most of the other species of salmonids are at such depressed levels, that no consistent harvests are allowed. The loss of steelhead harvests through abrogation, would impose extreme hardship on tribal fishers who would have to obtain their annual income during a short one month fishing season. The loss of this traditional fishery would be a further erosion of tribal culture and religious heritage, and the abrogation of treaties would seriously weaken the integrity of the United States government.

The Puyallup Nation opposes S. 874, which is erroneously entitled "The Steelhead Trout Protection Act".

Robert Satiacum, Chairman
Puyallup Nation

TESTIMONY OF ROBERT SATIACUM TO SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

I am Robert Satiacum, Chairman of the Puyallup Nation Council, governing body of the Puyallup Nation. Our people have been involved for many generations in court cases concerning our right to fish for steelhead. We have defended ourselves against cases in which the State of Washington has attempted to take away our rights; we have also taken the initiative to seek and obtain some protection for our right to steelhead through the judicial system. I myself have been a party in those court cases on more than one occasion. I would therefore like to summarize attempts which have been made in the past through the judicial and legislative branches to take away our right to fish for steelhead.

The State of Washington has of course made several attempts over the years to interfere with the Tribe's right to fish for all species of salmon. The courts have rejected those attempts in such cases as United States v. Winans, Washington v. Tulee, Washington v. Satiacum, and others.

In 1963 the State of Washington filed a case aimed directly at taking away our right to fish for steelhead. (Washington Department of Game v. Puyallup Tribe.) The State of Washington prohibits its citizens from fishing for steelhead with nets; those people can use only a hock and line. The State for many years attempted to enforce the same limitation against our people. That restriction would have taken away our right and our ability to feed ourselves and our families during the winter months when steelhead are the only available fish.

The State attempted to apply that law to us with physical assaults, arrests, and prosecutions in state courts. But we continued to fish and we defended ourselves in court. That one case required 17 years of fighting against the state courts and three trips to the United States Supreme Court. The Supreme Court upheld our right to fish for steelhead by ruling that the state cannot prohibit us from using nets to catch steelhead. The court said that "net fishing ... for commercial purposes was covered by the treaty." The court held that the treaty prevents the State from banning our net fishing for steelhead in order to allocate the entire run to the sport fishery. Now even the state courts have finally recognized that state agencies must obey federal court orders in the fishing cases. (*Puget Sound Gillnetters Ass'n v. Moos.*)

The most recent Supreme Court decision on our fishing rights (*Washington v. Fishing Vessel Ass'n*) reaffirmed that our steelhead fisheries are entitled to the same protection as our other fisheries. The same sharing principles which protect our right to other species of salmon also apply to steelhead. The State of Washington argued in that case that the treaties are meaningless, and provide us with no protection. The Supreme Court rejected that argument without hesitation ruling as they had many times before that a treaty such as ours "is essentially a contract between two sovereign nations", and that the treaties continue to protect our fishing rights.

The United States Supreme Court has thus repeatedly held that the treaties which protect our right to steelhead are the supreme law of the land. They continue to protect our right to support ourselves and our families by fishing on those stocks. We say that it would be a violation of the United States' honor and moral responsibility, as well as a violation of the law, to ignore the highest law of the land and pass a statute which attempts to take away our steelhead.

To its credit, Congress has refused to interfere with our steelhead and has in fact recognized and affirmed our right to fish for steelhead. In Washington v. Fishing Vessel Ass'n, the Supreme Court noted that Congress rejected three attempts in the 1960's to terminate our fishing rights. More recently, Congress has refused to enact proposed bills whose stated purpose was termination of our right to fish commercially for steelhead. Congress has instead reaffirmed our treaty-protected fishing rights including the right to fish for steelhead. (Fishery Conservation and Management Act of 1976; Salmon and Steelhead Conservation and Enhancement Act of 1980.)

The courts have recognized and upheld, at least to some extent, our fishing rights. The Congress has recognized and respected those rights. Action by this Congress to terminate our right to steelhead would renew the bitter dispute, controversy, and years of litigation which we had hoped would be laid to rest by the recent Supreme Court ruling. We urge you to leave the parties free to cooperatively manage the resource instead of enacting this attack on our rights which would only renew the controversy and drive the parties farther apart.

TELEPHONE 206-374-6163
QUILEUTE TRIBAL COUNCIL
POST OFFICE BOX 279
LA PUSH, WASHINGTON 98350

QUILEUTE

RESOLUTION OF THE QUILEUTE TRIBAL COUNCIL

LA PUSH

RESOLUTION NO.# 81-A-66

WHEREAS, The Quileute Indian Tribe organized under the Indian Reorganization Act of June 18, 1934, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Tribe approved by the Secretary of the Interior on Novermer 11, 1936, and;

WHEREAS, Indian tribes in the Northwest have fished and commercially traded steelhead for centuries, with no detrimental impact on the steelhead runs, and;

WHEREAS, In mid-19th Century, tribes signed treaties that allowed non-Indians to share in the steelhead harvest, and;

WHEREAS, State legislative action in the 1920's and 1930's declared steelhead a "game fish", thereby encouraging nearby unrestricted recreational fishing, and;

WHREAS, By the 1960's this unrestricted recreational fishery had caused a noticeable decline in native steelhead runs, and;

WHEREAS, The enforcement of regulations and monitoring of the recreational fishery continues to be so inadequate as to make it nearly a joke, and;

WHEREAS, Recreational fishermen have no more cultural tie with steelhead than they have with catfish, bass, or muskie, while steelhead is at the cultural and spiritual center of Indian life, and;

WHEREAS, Steelhead fishing is a winter occupation for the tribe and assures the continued existance of the tribe as a fishing society, and;

WHEREAS, Income derived from commercial steelhead fishing, feeds, clothes, and supports the families of fishermen and the community where they live and provides income to buyers, distributors, processors, and retailers across the nation and in foreign countries, while the value of recreationally caught steelhead is only a brief thrill for the sportsman, a minimal license fee, and some money put into a very localized area, therefore, the commercial value of steelhead is much higher than its recreational value, and;

Quileute Tribal Council
Resolution No.#
Continued --- Page two (2)

WHEREAS, The tax money to support steelhead enhancement programs comes largely from federal sources, for which the base is largely the lands that Indians granted to the government by treaties, and;

WHEREAS, Sportsmen can be fully compensated for any losses caused by steelhead derecreationalization by increasing their catches of the far more abundant hake and anchovy resources, and by acting as guides for Indian commercial fishermen in newly-opened commercial off-reservation fishing areas that are not part of usual and accustomed areas, and;

NOW THEREFORE, LET IT BE RESOLVED, THAT, Congress introduce legislation that derecreationalizes (prohibits recreational harvest of) steelhead, and;

BE IT FURTHER RESOLVED, THAT If a sportsman feels that he has suffered any losses under this legislation, he may file in Small Claims Court, and any compensation granted must be reduced by the value of the opportunity to provide guide services to Indian commercial fishermen, and;

BE IT FURTHER RESOLVED, THAT The title of the steelhead derecreationalization legislation shall be "The Steelhead Trout True Protection Act".

Russell Woodruff Sr.
Russell Woodruff, Sr., Chairman
Quileute Tribal Council

CERTIFICATION

I, the undersigned, hereby certify that the above Resolution was adopted at a special /"regular" meeting of the Quileute Tribal Council at La Push on the 25 day of June, 1981, by a vote of 2 FOR and 1 AGAINST.

Earl Penn
Authorized Representative
Quileute Tribal Council

SIERRA
CLUB
530 Bush Street San Francisco, California 94108 (415) 981-8634

Northwest Office
4534 1/2 University Way NE
Seattle, WA 98105
September 25, 1981

Senator William S. Cohen
Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

REC'D [illegible]

Dear Senator Cohen:

I was recently contacted by a member of your committee staff about the possibility of the Sierra Club presenting testimony on S. 874, the Steelhead Trout Protection Act, at a hearing to be held on September 28 in Washington, D.C. Unfortunately, it will not be possible to have someone from the Sierra Club who is familiar with the issue in Washington at that time.

I myself presented a statement at a hearing held in Seattle chaired by Senator Gorton on June 29. I am enclosing a copy for your information and request that it be included in the hearing record. The Sierra Club urges that a more cooperative approach be developed to solve the Steelhead problems than is represented in the confrontational one represented in S. 874.

Thank you for the opportunity to express our opinion on this issue.

Sincerely yours,

Richard A. Cellarius
National Secretary

enc.

cc (with enclosure):
    Members of the Committee

SIERRA
CLUB

530 Bush Street San Francisco, California 94108 (415) 981-8634

STATEMENT OF
RICHARD A. CELLARIUS*
ON S874
SEATTLE, WASHINGTON
29 JUNE 1981

I am speaking today on behalf of all the Sierra Club members in the Pacific Northwest and their concern for the protection of our natural resources. The steelhead trout is an important resource that has many uses for the several peoples who live in the Northwest; it certainly deserves protection and enhancement. Additionally, protection of its habitat serves many other conservation purposes that are of primary concern to our members. We congratulate Senator Gorton and his colleagues in the House of Representatives for their concern about the steelhead.

We believe, however, that S874, the proposed "Steelhead Trout Protection Act," is a poor and divisive approach to whatever problems existing in steelhead protection. As a result, the Sierra Club opposes S874.

Our opposition has several bases:

We have received information from various sides in the present dispute and cannot even find agreement on whether or not there is an overall decline in the steelhead population, without even considering what the causes of a decline might be. Before we search for solutions, we need data that everyone can agree on about what the problems are.

S874 puts a particular burden on the Native Americans who have treaty rights to the fish. Not only is this potentially unconstitutional, which could, in fact, delay the attack on the real issues while the legal battles are fought, but it may also take away the incentive for the tribes to continue their own management programs. The Sierra Club is convinced that the tribes have worked in good faith to protect and enhance the native fisheries; these efforts should be supported, not suppressed.

---

*National Secretary and Director, and member, Northwest Regional Conservation Committee, Sierra Club. Address: 2439 Crestline Drive NW, Olympia, Washington 98502

In contrast, the proposed legislation turns the entire task of fisheries protection and management over to the states, which past history has shown do not have an exemplary record in this area, to say the least. It seems to us to be a poor and unfair exchange.

The Sierra Club believes that before any additional legislation is considered, a full, objective study should be made of what the problems actually are and of the possible alternative solutions to those problems. The study team should include technical experts from the various disciplines relevant to the fisheries problem. Most importantly, it must be a study undertaken jointly and in good faith by the tribes, sportsmen's groups, the states, and the Federal government.

We believe that such a cooperative effort is the best way to deal effectively and conclusively with the complex technical and political issues that pervade fisheries management in the Northwest. We urge Senator Gorton and his colleagues to work for cooperative approaches rather than the divisive and diversionary one reflected in S874.

* * *

A copy of the resolution adopted unanimously by the Northwest Regional Conservation Committee establishing Sierra Club policy on S874 is appended.

RESOLUTION
of the
NORTHWEST REGIONAL CONSERVATION COMMITTEE
SIERRA CLUB

WHEREAS the steelhead trout is a valuable resource, but there are major disagreements as to the status of the resource and to the problems causing a decline, if any, and

WHEREAS the management of the resource by the states of the region has not been outstanding, and

WHEREAS the treaty tribes have both a treaty right to fish and to provide for environmental conditions conducive to fisheries survival and enhancement, and

WHEREAS S874 would take away the tribes' treaty right to fish for steelhead and the concurrent rights to protect steelhead habitat, and

WHEREAS S874 may be unconstitutional and thus would result in continued legal battling over the issue without resolving the basic issues of how to protect and enhance the steelhead resource, and

WHEREAS S874 does not deal with steelhead management and protection in a comprehensive manner but focusses the solution on eliminating Indian fishing on the resource without any assurance that this will improve the steelhead resource outlook,

THEREFORE, BE IT RESOLVED that the Northwest Regional Conservation Committee of the Sierra Club opposes S874 as a divisive and diversionary bill that provides no assurance that the steelhead will be protected, and

BE IT FURTHER RESOLVED that the Northwest Regional Conservation Committee of the Sierra Club believes that completion of a major, objective study consisting of the tribes, sportsmen, states, and U.S. government on the problems and solution to steelhead management is a necessary prerequisite to the enactment of any steelhead management legislation.

Adopted Unanimously

13 June 1981

TROUT UNLIMITED
ROBERT L. HERBST
Executive Director

3 November 1981

Honorable William S. Cohen
1251 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

The concerns of California Trout regarding a change in S.874 under Sec. 4(a) - Enforcement Authority are explained in the copy of an attached letter.

Please know that Trout Unlimited supports this inclusion of language.

Thank you.

Sincerely,

Robert L. Herbst
Executive Director

Enclosure
cc: Richard May
Tim Woodcock

1959-1981 "Over twenty years of trout and salmon conservation"
Washington, D.C. Headquarters • 118 Park Street, S.E. • Vienna, Virginia 22180 • (703) 281-1100

CALIFORNIA TROUT

September 21, 1981

Senator Slade Gorton
127-D Russell Building
Washington, D.C. 20510

Re: S. 874 (H.R. 2978) - Conditional Support

California Trout is a statewide organization dedicated to the protection and improvement of California's wild trout, native steelhead, and their waters. We are supported by 1,500 individual members and 35 affiliated angling clubs.

We have reviewed S. 874 and heartily endorse its purpose. The bill is greatly improved over earlier versions considered in the previous Congress. We can and will enthusiastically support the measure PROVIDED the following amendment is made to correct what we believe is a significant oversight:

> Sec. 4 Enforcement Authority. — (a) An Indian tribe may require a license to be obtained from, and fees to be paid to, the tribe with respect to any person fishing, or wishing to fish for steelhead trout on the tribe's Indian trust land or in waters within the exterior boundaries of the tribe's reservation if said waters and/or underlying bed are part of the reservation.

This amendment is needed to
1. Clarify intent with respect to a unique situation in California involving the Hoopa Reservation and Lower Klamath Extension; and
2. Prevent jeopardizing ongoing litigation being pursued by the State of California with respect to Klamath River fisheries.

The suggested language was provided us by Mr. Charles Getz of the California Attorney General's Office in San Francisco upon our inquiry and expression of concern. Mr. Getz represents the state in the current lawsuit.

Assistant Attorney General Getz assures us this will merely preserve the status quo of the litigants and affected parties. Without the amendment the measure, if enacted, could penalize Californians unfairly and inappropriately.

Thank you for considering our concerns.

Sincerely yours,

Richard H. May
President

cc's: Sen. Cranston
Mr. McCloskey, Mr. Clausen
DFG
AG- Getz
NWS&SC/TU

WASHINGTON
STATE
CATHOLIC
CONFERENCE
Serving 478,000 Roman Catholics in Washington State
Rev. D. Harvey McIntyre, Executive Director
1402 Third Avenue
Seattle, Washington 98101
Tel. (206) 382-4821

August 25, 1981

The Honorable Slade Gorton
127 Russell Senate Building
Washington, D.C. 20510

Dear Senator Gorton:

I wish to bring to your attention the fact that the Washington State Catholic Conference (WSCC) has joined our national office, the United States Catholic Conference (USCC) in opposing your SB-874 regarding Steelhead Fishing.

I am enclosing testimony of Mr. Michael Reichert, Director of Catholic Charities for the Archdiocese of Seattle, who testified at your June 30, 1981 hearing on behalf of the Washington State Catholic Conference.

The position of the Catholic Conference, nationally and locally, has essentially been based on the belief that treaties are not abrogated but rather stand firm unless bilaterally negotiated willingly by both sides.

If in this instance the basic concern relates to the preservation of the fish and to inadequate resources presently available I am inquiring why you have not instead of this legislation pushed for increased government assistance, in particularly for fish hatchery purposes in the State of Washington.

Sincerely,

D. Harvey McIntyre

(Rev.)D. Harvey McIntyre
Executive Director

DHM:db

Enclosure

ORAL STATEMENT OF MICHAEL L. REICHERT TO THE
U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS.
June 29, 1981

MY NAME IS MICHAEL REICHERT. I AM THE EXECUTIVE DIRECTOR OF THE OFFICE OF CATHOLIC CHARITIES FOR THE ARCHDIOCESE OF SEATTLE.

I AM HERE TODAY ON BEHALF OF THE WASHINGTON STATE CATHOLIC CONFERENCE WHICH REPRESENTS THE BISHOPS OF THE STATE OF WASHINGTON FROM THE DIOCESES OF SEATTLE, YAKIMA AND SPOKANE.

WE STRONGLY OPPOSE ADOPTION OF THE STEELHEAD PROTECTION ACT ON THE GROUND THAT IT VIOLATES THE SPIRIT AND LETTER OF EXISTING TREATIES BETWEEN THE PEOPLE OF THE UNITED STATES AND THE PEOPLE OF THE INDIAN NATIONS. FURTHER, WE ARE DEEPLY CONCERNED THAT THE STEELHEAD PROTECTION ACT IS A PRECURSOR OF A SERIES OF FEDERAL LEGISLATIVE EFFORTS DESIGNED TO UNDERMINE AND NEUTRALIZE THOSE TREATIES.

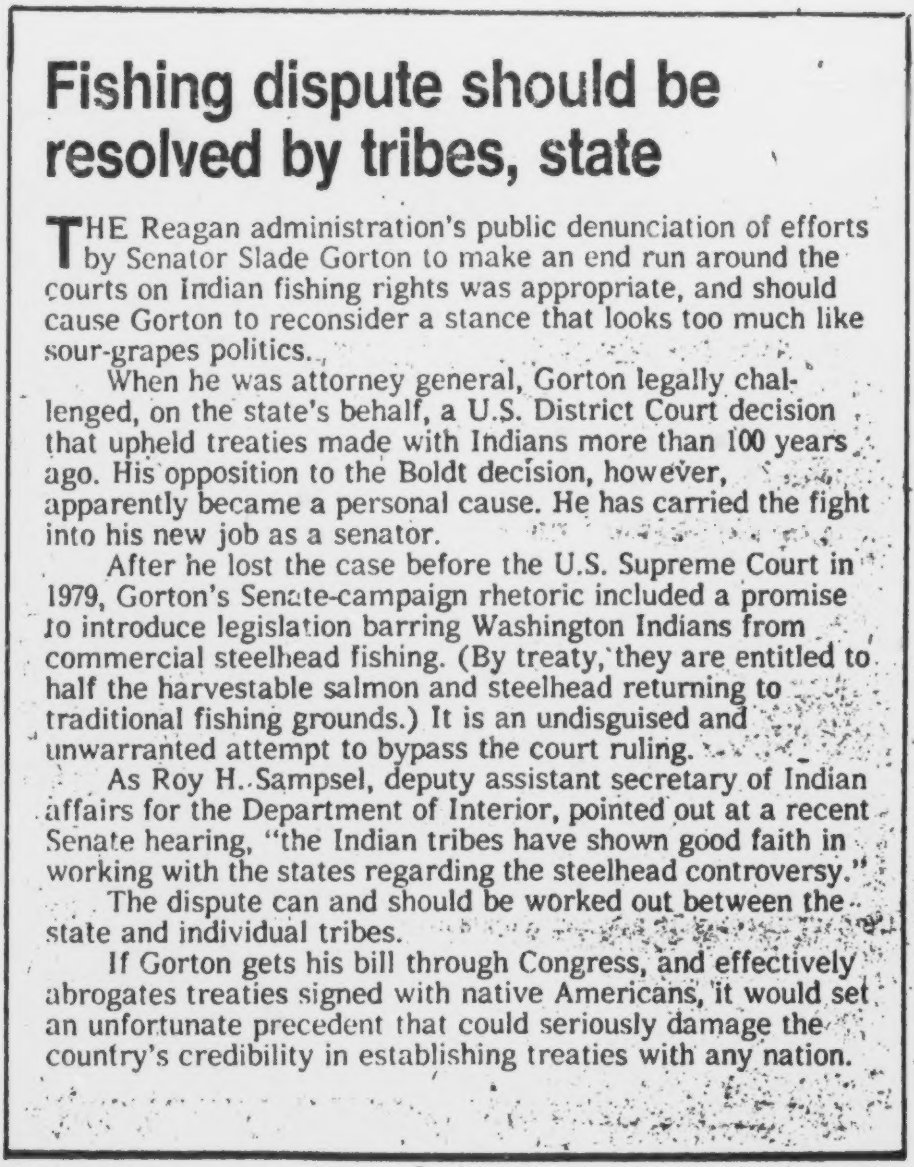
WE ARE COMPELLED TO SPEAK OUT PUBLICALLY AND BEFORE THE SELECT COMMITTEE BY STATING OUR FIRM BELIEF THAT DULY NEGOTIATED AND AGREED UPON TREATY RIGHTS CANNOT AND SHOULD NOT BE CONFISCATED, LITIGATED OR LEGISLATED AWAY.

WE ARE COMMITTED TO OPPOSING SUCH ACTIONS WHENEVER AND WHEREVER THEY ARE PROPOSED.

SENT BY CULLEN, HOLM & FOSTER

OLYMPIA, WASHINGTON

[From the Seattle Times, October 2, 1981]



Fishing dispute should be resolved by tribes, state

THE Reagan administration's public denunciation of efforts by Senator Slade Gorton to make an end run around the courts on Indian fishing rights was appropriate, and should cause Gorton to reconsider a stance that looks too much like sour-grapes politics.

When he was attorney general, Gorton legally challenged, on the state's behalf, a U.S. District Court decision that upheld treaties made with Indians more than 100 years ago. His opposition to the Boldt decision, however, apparently became a personal cause. He has carried the fight into his new job as a senator.

After he lost the case before the U.S. Supreme Court in 1979, Gorton's Senate-campaign rhetoric included a promise to introduce legislation barring Washington Indians from commercial steelhead fishing. (By treaty, they are entitled to half the harvestable salmon and steelhead returning to traditional fishing grounds.) It is an undisguised and unwarranted attempt to bypass the court ruling.

As Roy H. Sampsel, deputy assistant secretary of Indian affairs for the Department of Interior, pointed out at a recent Senate hearing, "the Indian tribes have shown good faith in working with the states regarding the steelhead controversy."

The dispute can and should be worked out between the state and individual tribes.

If Gorton gets his bill through Congress, and effectively abrogates treaties signed with native Americans, it would set an unfortunate precedent that could seriously damage the country's credibility in establishing treaties with any nation.

Whites Look To Treaty Indians To Keep Oil Out Of Puget Sound

By Brad Warren

Ask what is happening to the salmon fishery in Washington's Puget Sound, and you may get either a hundred answers or a snort.

Obviously, fishermen are going bankrupt. But piece together the myths, the facts and some recent events, and the puzzle begins to shape up as a showdown of historic proportions. The non-Indian fishermen and the tribes have never been allies, but now both have a common foe: the oil industry. At stake is Puget Sound, the richest salmon ground in the contiguous United States and one of America's prime marine landscapes.

By a strange twist, the 1974 court decision that crippled the non-Indian salmon fishery in western Washington is playing a part in what may be the only chance the industry — or anyone — has to protect the fish resource. For seven years, since U.S. **District Judge George Boldt ruled that the tribes have a treaty right to take up to half the harvestable salmon and steelheads passing through their traditional fishing grounds, fishermen have been so divided that they have had little chance to organize against the oil industry's plan to expand into the area.**

Now the principal legal weapon against that expansion is the so-called "Boldt Two" treaty right of the five treaty-area Indian tribes to have their share of the fish protected from environmental destruction. Since the tribes' fish come from the same streams as everybody else's fish, fishermen throughout the state have come to hail the decision as a victory; while it doesn't give non-Indians any more fish than Boldt did, at least it gives them reason to hope that there may be some fish left to swim into their nets. As John Curry of the Purse Seine Vessel Owners Association says, "If the Indians can do something that makes more fish, I should benefit indirectly."

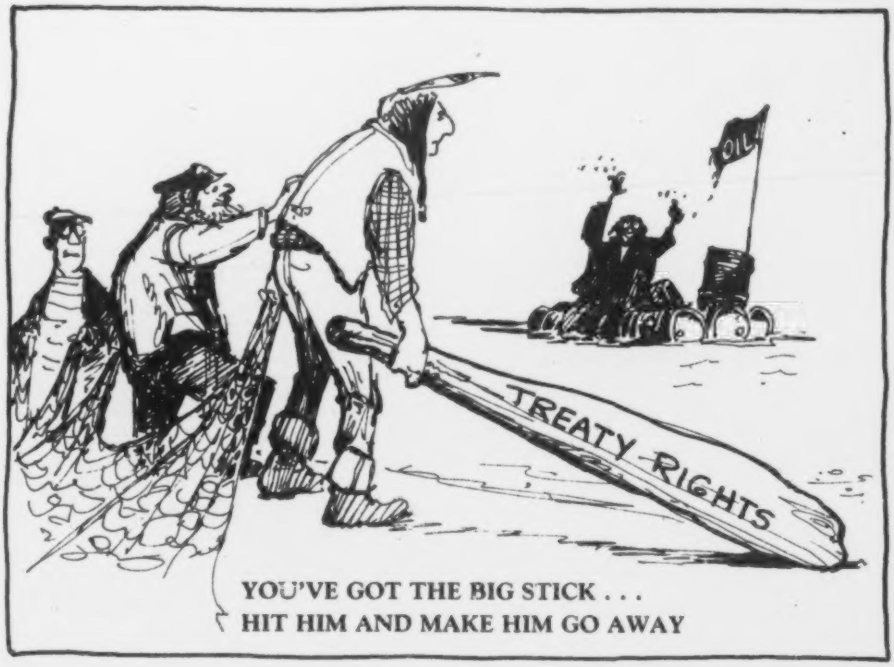
The right of environmental protection was established in September 1980, when **U.S. District Judge William Orrick settled the second phase of U.S. vs. Washington, the famous Indian fishing rights** lawsuit that produced the Boldt decision. Orrick's ruling is based extensively on Boldt's. It declares that, should degradation of the fishery habitat continue, "the right to take fish would eventually be reduced to the right to dip one's net into the water . . . and bring it out empty." Orrick's decision charges the state to protect the fishery environment.

A third decision, issued in January 1981 by **U.S. District Judge Robert Belloni, spotlights the upcoming conflict. Belloni dismissed all but one of a long list of** arguments prepared by environmentalists, local governments and tribes against the proposed Northern Tier crude-oil pipeline. That pipeline has been years in the planning and, if completed, would take up to 933,000 bbls. of oil per day from a deep-water oil port at Port Angeles, Wash., pump it beneath Puget Sound, across four states and into the theoretically oil-hungry Midwest. Standing behind this project — which is not the only factor involved in the oil industry's move into Puget Sound — is steel. The largest Northern Tier stockholder is U.S. Steel; the pipeline would be the largest steel contract in U.S. history. Against this, Belloni says, Indian fishing rights may prove a sound argument.

He did not agree outright with the tribes that the pipeline would menace their treaty-protected fish, but he decided that the argument merits a hearing — and then resigned from the case. The judge who will replace him is William Orrick..

Orrick's Boldt Two decision also has been cited in as-yet-unresolved tribal efforts to halt these other oil developments on Puget Sound:

- The oil industry is lobbying in the State Legislature for a bill to legalize oil and gas drilling beneath the sound and the Strait of Juan de Fuca through a technique known as slant drilling. Drills would remain onshore, with holes angled below the sea floor.
- The Chicago Bridge and Oil Co. is proposing to build offshore oil platforms near Cherry Point and float them off for installation when purchased.
- The international oil cartel is known to be anxious to see Puget Sound's temporary 125,000-d.w.t. limit on oil-tanker size lifted in order to prevent that limit from catching on elsewhere and in hopes of increasing tanker traffic on the sound. The Coast


OIL
TREATY RIGHTS
YOU'VE GOT THE BIG STICK . . .
HIT HIM AND MAKE HIM GO AWAY

— **Cartoon by Syd Stibbard**

Guard is presently reviewing the limit and plans to create a permanent one — one almost certainly higher. At present, the limit only applies in the sound, not in the Strait of Juan de Fuca. The Northern Tier pipeline would involve several tanker shipments through the strait each day carrying Alaskan and, probably, Indonesian crude.

The tribes' arguments against all these developments would be dismantled if the State of Washington wins its appeal of the Orrick decision. Like the Boldt decision before it, the Orrick decision imposes unwelcome responsibility on the state. The state contends that the Indian treaties made no mention of environmental protection for the fish and made no guarantee that the Indians would always have enough. The Indians have "a perpetual right to take fish only as long as there are fish available to be taken," the state says. (For a historical look at one of the treaties that influenced the decisions on Indian fishing rights, see story on p. 38.)

It will probably take another year or more before the 9th Circuit Court of Appeals rules on the state's appeal. But meanwhile, the Boldt, Orrick and Belloni decisions have placed the state's fisheries under mounting economic and political pressure. In the oil industry, the fishermen face a more powerful foe than ever before. Helen Schruder, a longtime advocate of non-Indian fishing rights who now is working to organize Northwest fishermen as a branch of the AFL-CIO, predicts, "If we let oil move in like that, boy, fisheries are going to go down the tube."

But just what will an oil-industry expansion do to the fisheries?

Again, the answers are many. While the toxic effects of oil upon fish are poorly understood, they are known to be real. Some fishermen worry about being run down by tankers, but the chief risk is a spill.

"It isn't a matter of *if* it happens," says a Coast Guard spokesman. "It's a matter of *when* it happens." Even with the 125,000-d.w.t. limit now in effect, a tanker could spill up to 40 million gals. of oil. Just 3 million would wreak ecological havoc on the sound.

Should one of the tankers feeding Northern Tier run aground and spill a large portion of its cargo, "The impact on fish would be devastating," according to Dr. Carl Nyblade.

A San Juan Island marine biologist, Nyblade says that such a spill could coat much of the Strait of Juan de Fuca, the bottleneck through which nearly all of the region's salmon return. "Adults have some advantage in that they can avoid pollution," Nyblade says. But they may not be able to get through the strait.

In fact, a study on New Brunswick's Miramichi River has shown that when adult Atlantic salmon "reached sublethal concentrations of pollution, they aborted their upstream migration and returned downstream without spawning," according to a report by National Marine Fisheries Service scientists Dale Evans and Stanley Rice. Evans and Rice report that salmon may change migration patterns to avoid "even very low levels of pollution." In pre-filed testimony against Northern Tier, Makah tribal fisherman Dale Johnson states that oil-fouled gear is useless until cleaned. "You cannot catch fish with contaminated gear, because the fish will stay completely away from it," he says.

But the crux of the Indians' claim is that a major spill would kill the fish runs themselves. The final environmental impact statement for Northern Tier acknowledges, "Local populations of clams, oysters, Pacific herring, surf smelt, salmon, crab, shore birds and waterfowl could be reduced, with mortalities approaching 100% within affected areas." Floating eggs of sole and flounder would also be killed, Nyblade says, and many shellfish that survive would be "tainted and unsalable."

An oil spill isn't just a floating glob that kills and taints sea creatures until it is cleaned up. Not all oil floats. Suspended oil particles have been found nearly 150' below the surface miles from the site of a bunker C oil spill in Chedabucto Bay, Nova Scotia. Although such diluted oil may not immediately kill fish, it can exert numerous delayed effects. Water-soluble, toxic components of oil can poison fish days and miles from an accident. Some toxins rapidly enter the gills and induce a narcotic state in the fish, which dramatically increases their vulnerability to predators. Sublethal exposure to pollutants can break down resistance to infections — the prime killer of birds which survive the initial impact of oil spills. Mating and homing behavior may be disrupted, impairing the species' ability to propagate. More vulnerable food organisms may be wiped out, leaving the fish to starve.

And an oil spill on the sound can't be cleaned up overnight; relatively small spills have taken more than a week to remove. Part of the problem on Puget Sound is that in any spill, oil reaches the shores within hours, or days at most. The shallow, exposed gravel salmon feeding grounds of the San Juans would be devastated quickly by a major spill in the strait; lacking the huge stock of oil-containment booms necessary to handle such an occurrence, the region is not even prepared to protect its marinas and embayments. Should oil reach some of the shellfish grounds, stocks could take decades to regenerate — if they regenerate at all.

Increased oil traffic in the region raises another problem for fisheries which the draft environmental impact statement for Northern Tier neatly addresses in these words:

"Gillnetting activities pose a hazard to tanker operations since fishing vessels are generally non-maneuverable when nets are deployed."

With its strong currents and treacherous fog, the Strait of Juan de Fuca has seen its share of maritime accidents. The Makahs' Dale Johnson states that he has seen fishermen lose gear to large vessels — but the more serious threat is that a tanker may veer to avoid fishing craft and run aground.

While the results are certain to show up on the water, the fiercest part of the battle between fisheries and oil interests in the region will sound in the courts. The underpinnings of this dispute — and of Orrick's decision on Northern Tier — will reflect some of the major current problems.

Because of the Boldt Two decision Indians now wield greater power than before over zoning, housing development, industry and a host of other off-reservation projects. They are treading very carefully so as not to lose that power, but they have issued firm warnings that they will take the government to court if it allows the oil industry to damage the fish runs. How the Indians handle their new power may have considerable bearing on the course of Indian treaty rights decisions in the future.

Today, the archaic, disorganized fishing industry — one of the last holdouts of the free-enterprise idea — is being forced to confront both its own management problems and powerful competition from the oil industry. Part of what the courts have mandated is a fisheries management program to ensure that overfishing does not destroy the runs. But the trollers have gone on fighting against the gillnetters, and the gillnetters against the seiners — and everybody against the Indians. What may force an end to the rivalry is a common enemy.

Even if pollution from oil spills posed no threat to the fisheries, the underlying dispute is between the inherited way of life of small-time fishermen and a modern, centralized industry bent on efficient mining and transport of oil.

Both fishing and the oil industry are gaining political momentum because of the scarcity of their resources: fish and oil. The world problems of the next decade are certain to revolve around efforts to manage and allocate such resources.

Historically, fishing has given way to energy concerns as hydroelectric dams have been constructed on the great salmon rivers of America. On the East Coast, the Georges Bank fisheries are losing ground to the oil industry's move to set up offshore oil rigs.

It will be a surprising reversal if fishing wins on Puget Sound. But the fight will be worth it. In fact, success may have to be measured not on whether oil's progress into Puget Sound is halted, but as to what controls are placed on the industry to keep it in line. If the Indians and the fishermen fail to align their efforts, their effectiveness will be considerably weakened. That will make it easier for the short-term benefits of oil to override the long-term supply of fish.